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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1959.

No. 551

GLADYS LAYCOCK,
Petitioner,

vs.

FRANK J. KENNEY,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Ninth Circuit.

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PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Ninth Circuit.

Petitioner, Gladys Laycock, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Ninth Circuit entered in the above-entitled case on September 1, 1959.

CITATION TO OPINION BELOW.

The opinion of the Court of Appeals, printed as Appendix B, infra, has not as yet been officially reported.

JURISDICTION.

The judgment of the Circuit Court of Appeals was entered on September 1, 1959 (App. B, p. 40). Rehearing was denied on October 21, 1959 (App. B, p. 40). The jurisdiction of this court is invoked under 28 U. S. C., Section 1254.

QUESTIONS PRESENTED.

1) When the Federal Government, for a valuable consideration, by its patent has sold the gold in a mining claim and granted the right to extract and possess such gold, then has the Federal Government power to alter the terms of that grant by imposing conditions which make it impossible to produce and sell the gold at a profit, and which thereby deprive the owner of the exercise of the very rights vested in him by the government's grant, and may the government do so without any compensation?

2) After the issuance of such a patent, has the government power to prohibit production and ownership of that gold except under regulations, issued by the Secretary of the Treasury, which regulations effectively set the price of gold below the cost of its production; make the Treasury "the ruler of the market place"; "have ruined the gold mining industry" and have thereby destroyed the rights granted by the government's patent?

3) When the government by its patent grants a group of rights, including the right to possess, use and dispose of the gold in a mining claim, is not such group of rights property within the meaning of the Fifth Amendment to the Constitution?

4) Where the effects of the government action deprive the owner of all of such group of rights, does not such deprivation of the former owner constitute a taking of his

property within the meaning of the Fifth Amendment, even though the government does not actually appropriate or take physical possession of the property?

5) If complete authority over gold be necessary to the exercise of any constitutional power of Congress, is not such authority exercised for a public purpose?

When in exercising such authority for a public purpose, the government deprives a miner of his right to produce and sell his gold at a profit, does not the government take his property for a public purpose without due process of law and without just compensation in violation of the Fifth Amendment?

Does not the Fifth Amendment prohibit the fixing of a price arbitrarily without a hearing, and does not the Fifth Amendment prohibit the taking of property without just compensation, and under Article III, Section 1 of the Constitution must not the amount of such compensation be determined by a court?

6) Is not the exercise of the power of Congress over monetary and currency matters subject to the limitations imposed by the Fifth Amendment?

7) When a regulation makes the Treasury "the ruler of the market" and "effectively sets the price of gold" to the producer at $35.00 per ounce, which is below the cost of its production, and when the Treasury sells that gold to industrial users for $35.00 per ounce, does not the government take the property of the producer and give it to the consumer and subsidize the consumer at the expense of the producer in violation of the Constitution?

8) When a statute in general terms authorizes the Secretary to impose conditions upon the acquisition or treatment of gold "(except on behalf of the United States)", and another statute specifically authorizes the Secretary "to

purchase gold" for the United States at prices within his discretion, then

(a) does the power to impose conditions upon the acquisition of gold include the power to the Secretary to set the price of gold below the cost of its production, and

(b) does the Secretary have power to impose those conditions, including the price set by him, upon his own purchases, when he is acting under the authority of another statute which specifically authorizes him to purchase gold on behalf of the United States at prices within his discretion?

9) When the government has completely divorced gold from our currency or monetary system by abolishing gold as money, by prohibiting its use as coin, legal tender or as a medium of exchange, and has abolished gold as the standard of value by prohibiting any contract for an "amount of money measured by gold", and gold has become merely a commodity, then

(a) Has the government power to set the price of that commodity—gold?

(b) Has the government power to prohibit or to require a license for the ownership or production of gold, or power to limit, control or regulate the ownership or use of the commodity—gold?

10) Has the government power to compel the owner of gold, which possesses intrinsic value, to surrender that gold in exchange for irredeemable paper currency issued by the government, which contains no definable or enforceable promise?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

Constitution, Article III, Sec. 1. Printed in Appendix A.

The Fifth Amendment. Printed in Appendix A.

U. S. C., Title 31, Sec. 734, 48 Stat. 341. Printed in Appendix A.

U. S. C., Title 31, Sec. 442, 48 Stat. 340. Printed in Opinion below (R. p. 32) thereof and in Appendix A.

Gold Regulations, Title 31 (C. F. R. Part 54, 19 F. R. 4309-4316). Printed in Appendix A.

STATEMENT.

In 1906 the government by its patent, for a valuable consideration, granted the right to own, extract and possess the precious metals on a mining claim, of which petitioner owns 55%.

In 1934 Congress abolished gold as money and prohibited the use of gold as the standard of value in the United States and authorized the Secretary of the Treasury, by regulations, to prescribe the conditions under which gold might be acquired, held, treated or melted for non-monetary purposes. That statute imposed the conditions to be prescribed by such regulations upon the acquisition, melting or treating of gold, but expressly excluded the government from such conditions in these words "(except on behalf of the United States)". U. S. C., Title 31, Sec. 442.

The regulations issued require a license to acquire, melt or treat gold, and no license will issue without an agreement from the licensee to comply with all of such regulations.

His regulations "effectively set the price of gold in the United States" and "make the Treasury the ruler of the

market" (see opinion of Court of Appeals, pp. 25-26). They do so by authorizing the mints to purchase newly mined gold and to sell gold to licensed users, and by directing:

(a) That the mints shall pay for all gold $35.00 per ounce;

(b) That the mints shall charge for all gold sold to licensed users $35.00 per ounce.

Thus, under his authority to prescribe conditions upon the acquisition, treatment or melting of gold for non-monetary purposes, by parties other than the government, the Secretary has effectively set the price of gold, and applies such regulation, including the price set by him, to the acquisition of gold which another statute authorizes him to "**purchase**" on behalf of the United States.

He does so even though the statute (Section 442), expressly excludes from such regulation gold acquired "(on behalf of the United States)". He does so even though Section 734, of said Title 31, authorizes the Secretary to "**purchase** gold" at prices within his discretion, and directs that all gold so purchased by the Secretary shall become the property of the United States.

The price of $35.00 per ounce in paper currency was set in 1934 and is still in effect and is far below the cost of production of gold.

The regulations have closed practically all the gold mines in the United States. The Western Gold Mining Council states that not a gold mine is operating on the mother lode in California.

The regulations make it impossible for the petitioner to operate her gold mine at a profit, causes the property to remain idle and her machinery and equipment to remain idle and deteriorate, and thus deprive her of her means of livelihood, by depriving her of the exercise of the very rights granted to her by the government's patent.

Petitioner alleges a complete lack of statutory or constitutional authority for the Secretary to set the price of gold. That enforcement of the regulations deprives her of her property and of any use of her property and destroys its value, and thus deprives her of her property and takes her property without just compensation in violation of the Fifth Amendment.

She also alleges that by the government setting the price of gold below the cost of its production, and by the government selling gold to commercial users at that price, the government takes her property and gives it to another and, thereby, subsidizes the commercial user of gold at the expense of the producer in violation of the Constitution.

Petitioner also alleges that the determination of just compensation for depriving her of her gold, or of her right to produce and sell that gold at a profit, which right was patented to her by the government, can only be made by a court as a judicial function, and that the Executive Department has no power to set the price of gold or to determine just compensation for depriving her of her rights.

Petitioner alleges that she is without adequate remedy of law and that the defendant, Kenney, a special agent of the Treasurer, charged with the enforcement of such regulations, and responsible for making arrests and causing prosecution for the violation of such regulations, has threatened her arrest, prosecution and punishment and confiscation of her gold if she attempts to sell her gold at a fair market price in violation of the regulations.

Petitioner prayed for a declaratory judgment that the regulations be declared void as being in excess of any proper power, and for an injunction against the defendant from enforcing such regulations or interfering with or molesting the Petitioner in operating the mining claim

and in exercising her rights as granted to her by the Government's patent.

The Circuit Court of Appeals sustained the jurisdiction of the federal courts to determine the case but denied the relief prayed.

The Circuit Court of Appeals adjudged that the statute did not specifically authorize price control of gold, but that the regulations effectively set the price of gold and made the Treasury the ruler of the market.

The Court of Appeals specifically ruled that the Fifth Amendment "refers only to direct appropriation"; and that there had been no "taking" in the constitutional sense.

The Court held that even though the price set had ruined the gold mining industry and had deprived this Petitioner of the right to operate her mine at a profit, the enforcement of the regulations did not entitle her to relief because such regulations bear a reasonable relationship to the exercise of a constitutional power, i. e., the power of Congress "to coin money and regulate the value thereof".

Thus the Court of Appeals decided that an Executive Officer could impose conditions, which restrict or prevent the exercise of a right which had been granted by a patent from the Government.

Also the Court of Appeals thus ruled:

(a) That Government action, which relates to the exercise of a constitutional power, is not subject to the limitations imposed by the Fifth Amendment.

(b) That the Fifth Amendment does not protect a citizen against the Government depriving that citizen of all use of his property.

The Court of Appeals also held that the federal government has power to compel a private citizen to surrender

private property in exchange for paper currency, which has no absolute value and contains no obligation to redeem in any fixed value.

REASON FOR GRANTING THE WRIT.

The Decision of the Court of Appeals Is in Direct Conflict With Applicable Decisions of This Court.

We state below the law as declared in the decisions of this Court and in each instance show how the decision below conflicts with such decisions of this Court.

This Court holds:

(a) That rights granted by the Government's patent can not be divested or altered by any subsequent action of Congress or of the Executive Department.

Choat v. Trapp, 224 U. S. 665 at 674;
Jones v. Meehan, 175 U. S. 1 at 32;
Johnson v. Drew, 171 U. S. 93 at 100.

The opinion below holds that rights granted by a patent are subject to what Congress may determine is for the greater public interest (Op. p. 28).

(b) That rights against the United States arising out of contracts with it are protected by the Fifth Amendment.

Lynch v. United States, 292 U. S. 571 at 579.

The opinion below holds directly to the contrary (Op. p. 38).

(c) That where the effect of the Government's action is to deprive an owner of all or most of his interest in property, or seriously interfere with the common or necessary use of the property, such action

amounts to a "taking" even though the Government does not actually acquire the title.

U. S. v. Causby, 328 U. S. 256 at 261 and 2;
Pa. Coal Co. v. Mahon, 260 U. S. 393 at 414;
U. S. v. Kansas City Life Insurance Co., 339 U. S. 799 at 809;
U. S. v. Cress, 243 U. S. 316 at 324 to 329;
Pumpelly v. Green Bay Co., 13 Wallace at 166.

But the opinion below holds that the Fifth Amendment "refers only to a direct appropriation" (Op. p. 36).

(d) That the exercise of every constitutional power is subject to the limitations imposed by the Fifth Amendment.

Monongahela Navigation Co. v. U. S., 148 U. S. 312 at 336;
Currin v. Wallace, 306 U. S. 1 at 14;
Louisville Bank v. Radford, 295 U. S. 559 at 589.

That even the war power is subject to the Fifth Amendment.

Ex parte Milligan, 14 Wallace at 119.

As is the power of Congress over money.

Hepburn v. Griswold, 8 Wallace at 624.

But the opinion below holds directly to the contrary (Op. pp. ~~24-25~~ 36).

(e) That the right of an owner to fix the price for his property is within the protection of the Fifth Amendment.

Tyson and Bro. v. Banton, 273 U. S. 418 at 429.

The opinion below holds to the contrary (Op. p. 26 and p. 39).

(f) The statute which authorizes the Secretary to purchase gold at discretionary prices recognizes that gold and currency are not of equal value in the market.

Trebilcock v. Wilson, 12 Wallace at 696.

But the opinion below disregards that fact (Op. pp. 37-39).

(g) This court sustained the Joint Resolution of June 5, 1933, which makes all coins and currencies legal tender as valid when applied to **private obligations** (Norman v. B. & O. R. R. Co., 294 U. S. 240). This court adjudged the same resolution unconstitutional as applied to **obligations** of the government (Perry v. United States, 294 U. S. 330 at 358). The obligation to pay for gold bullion deposited at the mints is an **obligation of the United States** imposed by statute. (U. S. C., Title 31, Sec. 358-359.)

But the Court of Appeals held that the issue here presented with respect to that obligation of the government was controlled by the Norman decision, which applied only to private obligations (Op. p. 39).

Important Questions of Federal Law Which Have Not Been, But Should Be Settled by This Court.

After the federal government has abolished gold as money and has prohibited any contract for an amount of money measured by gold, then

(1) Has the federal government power to set the price of the commodity gold, and to set that price below the cost of production of such gold and to impose that price upon the owner of the gold mine theretofore patented by the United States?

(2) Does any federal statute authorize the Secretary to set the price of the commodity gold?

(3) Has the federal government power to compel the owner of a gold mine either to abandon the rights granted him by the government's patent, to wit, the right to produce and sell his gold, or to sell his gold at a price set by the government which is below the cost of its production?

(4) When the law imposes upon the Federal Government the obligation to pay for all gold bullion deposited at the mints, may the Federal Government discharge that obligation by tendering paper currency which has no absolute fixed value, and which contains no obligation to redeem in any absolute fixed value?

Question 4 was posed by this court in Bronson v. Rodes, 7 Wallace at 253 by way of illustration. It was there implicitly answered in the negative. Such answer was *arguendo* and was not an adjudication. But in Perry v. United States, 294 U. S. at 354, this court held the Joint Resolution of June 5, 1933, unconstitutional as applied to obligations of the government.

Importance of the Questions.

The questions presented are of national importance and extend far beyond the rights of this petitioner. The right of a free people to own and possess the commodity, gold, is a basic right recognized by the governments of every major nation except the United States and Russia.

When, by a patent issued by the government, for a consideration, in accordance with a valid statute, a citizen has acquired the gold in a mining claim and the right to extract, possess and convert that gold to his own use, then the power of the government by subsequent action to deprive the owner of such mining claim of the very rights acquired from the government by its patent is of basic importance.

Those questions are of general importance.

ARGUMENT.

Gold is a commodity—an object of purchase and of sale. The decisions of this court so hold. The statutes expressly authorize the "purchase" and "sale" of gold by the government.

Until 1934 gold coins minted in the United States were used as money.

But, existing laws have prohibited the coinage of gold and deprived gold of any quality as money, as legal tender, as a medium of exchange or as a standard of value in the United States. Such laws have completely divorced the commodity gold from our system of managed currency.

As this court has said, Congress "was entitled to reject a dual system" (294 U. S., p. 316), and had adopted "a single monetary system" (294 U. S., p. 357), and the internal economy had been adjusted "to a single measure of value" (294 U. S., p. 358). That single measure of value is paper currency.

As Justice Stone wrote, the purpose of such measures was

> "the suppression of the use of gold as a standard of currency value" (307 U. S. 262).

This court has always distinguished between our former gold **coins**, which were money, and gold as a **commodity**. The decisions have sustained a limited power over **coins** because they were money and functioned as money (sic), "because of their quality as a legal tender and as a medium of exchange."

No decision of this court sustains any power over gold when in the form of bullion or of foreign coins, because gold in such form is merely a commodity.

When our government has abolished gold coins and deprived gold of any quality or function as a legal tender

or as a medium of exchange and has prohibited any contract for an amount of money "measured by gold", our government has excluded gold from our currency system. Such exclusion and divorcement of gold from our money or currency removed the commodity gold from the orbit of the constitutional power over coined money. But, notwithstanding that fact, the opinion below sustained the power of the government over the commodity gold on the ground that such power bore a reasonable relationship to the constitutional power over money (R. p. 43).

Petitioner does not seek to sell her gold to the government at a higher price nor to impose any obligation on the government to buy her gold at any price. Petitioner seeks only to exercise the right, which she acquired under the patent granted by the government—the right to extract, possess and sell her own gold at her own price. The exercise of that right cannot affect the currency system of the United States. The free exercise of that right until 1934 did not then affect our currency system. The free exercise of that right in every major nation (except Russia and the United States) does not now affect the currency system of any such nation.

CONCLUSION.

It is respectfully submitted that the writ of certiorari should issue as prayed.

Respectfully submitted,

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APPENDIX A.

Relevant Portions of the Fifth Amendment and of Article III, Section 1 of the Constitution.

Fifth Amendment—Nor shall any person be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Article III, Section 2—The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the Congress may from time to time ordain and establish.

Statutes Involved.

(31 U. S. C. 442), 48 Stat. 340.

"The Secretary of the Treasury shall, by regulations issued hereunder, with the approval of the President, prescribe the conditions under which gold may be acquired and held, transported, melted or treated, imported, exported, or earmarked: (a) for industrial, professional, and artistic use; (b) by the Federal Reserve banks for the purpose of settling international balances; and (c) for such other purposes as in his judgment are not inconsistent with the purposes of this act. Gold in any form may be acquired, transported, melted or treated, imported, exported, or earmarked or held in custody for foreign or domestic account (except on behalf of the United States) only to the extent permitted by, and subject to the conditions prescribed in, or pursuant to, such regulations. Such regulations may exempt from the provisions of this section, in whole or in part, gold situated in places beyond the limits of the continental United States. Jan. 30, 1934."

(U. S. C., Title 31, Sec. 734), 48 Stat. 341.

With the approval of the President, the Secretary of the Treasury may purchase gold in any amounts, at home or abroad, with any direct obligations, coin, or currency of the United States, authorized by law, or with any funds in the Treasury not otherwise appropriated, at such rates and upon such terms and conditions as he may deem most advantageous to the public interest; any provision of law relating to the maintenance of parity, or limiting the purposes for which any of such obligations, coin, or currency, may be issued, or requiring any such obligations to be offered as a popular loan or on a competitive basis, or to be offered or issued at not less than par, to the contrary notwithstanding. All gold so purchased shall be included as an asset of the general fund of the Treasury.

U. S. TREASURY DEPARTMENT

OFFICE OF THE SECRETARY

GOLD REGULATIONS

[Reprinted from FEDERAL REGISTER, July 14, 1954]

JULY 14, 1954

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1954

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SUBPART A—GENERAL PROVISIONS

§ 54.1 *Authority for regulations.* By virtue of and pursuant to:

(a) The authority vested in the Secretary of the Treasury by the Gold Reserve Act of 1934, approved January 30, 1934 (48 Stat. 337; 31 U. S. C. 440), and the authority with respect to the approval of regulations issued thereunder which the President of the United States has delegated to the Secretary of the Treasury in paragraph 2 (d) of Executive Order No. 10289 of September 17, 1951 (16 F. R. 9501) and

(b) The authority which the President of the United States has delegated to the Secretary of the Treasury by Executive Orders Nos. 6260 of August 28, 1933 (31 CFR 1938 ed. Part 50), 6359 of October 25, 1933 and 9193 of July 6, 1942, as amended (7 F. R. 5205, 3 CFR 1943 Cum. Supp.), which delegations were made by the President of the United States by virtue of and pursuant to the authority vested in him by section 5 (b) of the act of October 6, 1917 (40 Stat. 415), as amended by

section 2 of the act of March 9, 1933 (48 Stat. 1), and title III, section 301 of the "First War Powers Act, 1941" (55 Stat. 839; 12 U. S. C. 95a), and all other authority vested in him, the following regulations, entitled "Gold Regulations," deemed in the public interest and necessary and proper to carry out the purposes of said acts and Executive orders, are issued by the Secretary of the Treasury.

§ 54.2 *General provisions*—(a) *Scope.* Sections 54.12 to 54.34 refer particularly to section 3 of the Gold Reserve Act of 1934, as amended, and to Executive Order No. 6260 of August 28, 1933, sections 4, 5, and 6 of the Executive Order No. 6359 of October 25, 1933, and Executive Order No. 9193 of July 6, 1942, as amended; and §§ 54.35 to 54.52 refer particularly to sections 8 and 9 of the Gold Reserve Act of 1934, as amended.

(b) *Delivery requirements of 1933 gold orders.* Executive Order 6102 of April 5, 1933, Executive Order 6260 of August 28, 1933 (31 CFR 1938 ed. Part 50), and the order of the Secretary of the Treasury of December 28, 1933, as amended and supplemented, required that, with certain exceptions, all persons subject to the jurisdiction of the United States deliver to the United States gold coins, gold bullion and gold certificates situated in the United States and held or owned by such persons on the dates of such orders. Gold coins having a recognized special value to collectors of rare and unusual coin, including all gold coins made prior to April 5, 1933, have been exempted from such delivery requirement. The regulations in this part do not alter or affect in any way the requirements under said orders to deliver gold bullion and gold certificates and gold bullion and gold certificates required to be delivered pursuant to such orders are still required to be delivered and may be received in accordance with the Instructions of the Secretary of the Treasury of January 17, 1934 (§ 53.1 of this chapter), subject to the rights reserved in such instructions.

(c) *Effect of authorizations and licenses.* (1) A general authorization contained in, or a license issued pursuant to the regulations in this part, permitting the acquisition, holding, transporting, melting or treating, importing, exporting or earmarking of gold, constitutes within the limits and subject to the terms and conditions thereof a license issued under and pursuant to Executive Order No. 6260 of August 28, 1933, for such acquisition, holding, transporting, etc.

(2) Any authorization in the regulations in this part, or in any license issued hereunder to acquire, hold, transport, melt or treat, import or export gold in any form shall not be deemed to authorize, unless it specifically so provides, the acquisition, holding, transporting, melting or treating, importing, or exporting of the following:

(i) Any gold coin (except rare gold coin as defined in § 54.20) or any gold melted by any person from gold coin subsequent to April 5, 1933.

(ii) Any gold which has been held at any time in noncompliance with the acts, the orders, or any regulations, rulings, instructions or licenses issued thereunder, including the regulations in this part, or in noncompliance with section 3 of the act of March 9, 1933, or any orders, regulations, rulings, or instructions issued thereunder.

(d) *Revocation or modification.* The provisions of this part may be revoked or modified at any time and any license outstanding at the time of such revocation or modification shall be modified thereby to the extent provided in such revocation or modification.

§ 54.3 *Titles and subtitles.* The titles in this part are inserted for purposes of ready reference and are not to be construed as constituting a part of the regulations in this part.

§ 54.4 *Definitions.* (a) As used in this part, the terms:

(1) "The acts" means the Gold Reserve Act of 1934, as amended, and section 5 (b) of the act of October 6, 1917, as amended by section 2 of the act of March 9, 1933 and Title III, section 301 of the "First War Powers Act, 1941" approved December 18, 1941.

(2) "The orders" means Executive Orders Nos. 6260 of August 28, 1933; 6359 of October 25, 1933; and 9193 of July 6, 1942, as amended.

(3) "United States" means the Government of the United States, or where used to denote a geographical area, means the continental United States and all other places subject to the jurisdiction of the United States.

(4) "Continental United States" means the States of the United States, the District of Columbia, and the Territory of Alaska.

(5) "Person" means any individual, partnership, association, or corporation, including the Board of Governors of the Federal Reserve System, Federal Reserve banks, and Federal Reserve agents.

(6) "Mint" means a United States mint or assay office, and wherever authority is conferred upon a "mint" such authority is conferred upon the person locally in charge of the respective United States mint or assay office acting in accordance with the instructions of the Director of the Mint or the Secretary of the Treasury.

(7) "Gold coin" means any coin containing gold as a major element, including gold coin of a foreign country.

(8) "Gold bullion" means any gold which has been put through a process of smelting or refining, and which is in such state or condition that its value depends primarily upon the gold content and not upon its form; the term "gold bullion" includes, but not by way of limitation, semi-processed gold and scrap gold, but it does not include fabricated gold as defined in this section; metals containing less than 5 troy ounces of fine gold per short ton, or unmelted gold coin.

(9) Fabricated and semi-processed gold:

(i) "Fabricated gold" means processed or manufactured gold in any form (other than gold coin or scrap gold) which:

(*a*) Has a gold content the value of which does not exceed 90 percent of the total domestic value of such processed or manufactured gold; and

(*b*) Has, in good faith, and not for the purpose of evading or enabling others to evade the provisions of the acts, the orders, or the regulations in this part, been processed or manufactured for some one or more specific and customary industrial, professional or artistic uses.

(ii) "Semi-processed gold" means processed or manufactured gold in any form (other than gold coin or scrap gold) which:

(*a*) Has a gold content the value of which exceeds 90 percent of the total domestic value of such processed or manufactured gold; and

(*b*) Has, in good faith, and not for the purpose of evading or enabling others to evade the provisions of the acts, the orders, or the regulations in this part, been processed or manufactured for some one or more specific and customary industrial, professional or artistic uses.

(iii) The value of the gold content of an article shall be computed for the purposes of this subparagraph at $35 per troy ounce of fine gold content.

(iv) For the purpose of this subparagraph, the total domestic value of processed or manufactured gold shall be based on the cost to the owner and not the selling price. The allowable elements of such value are:

(*a*) In the case of a manufacturer or processor, only the cost of material in the article, labor performed on the article, and processing losses and overhead applicable to the manufacture or processing of such article; and

(*b*) In the case of a dealer or other person who holds or disposes of gold without further processing, only the net purchase price paid by such person, including transportation costs, if any, incurred in obtaining delivery of such article to his usual place of business.

(10) "Scrap gold" means gold filings, clippings, polishings, sweepings and the like and any other melted or unmelted scrap gold, semiprocessed gold or fabricated gold, the value of which depends primarily upon its gold content and not upon its form, which is no longer held for the use for which it was processed or manufactured.

(11) "Gold in its natural state" means gold recovered from natural sources which has not been melted, smelted, or refined, or otherwise treated by heating or by a chemical or electrical process.

(12) "Hold", when used with reference to gold, includes actual or constructive possession of or the retention of any interest, legal or equitable, in such gold, and includes, but not by way of limitation, acts of agency with respect thereto although the principal be unknown.

(b) Wherever reference is made in this part to equivalents as between dollars or currency of the United States and gold, $1 or $1 face amount of any currency of the United States equals fifteen and five twenty-firsts ($15\frac{5}{21}$) grains of gold, nine-tenths fine.

(c) Wherever reference is made in this part to "sections", the reference is, unless otherwise indicated, to the designated sections of this part.

§ 54.5. *General provisions affecting applications, statements, and reports.* Every application, statement, and report required to be made under this part shall be made upon the appropriate form prescribed by the Secretary of the Treasury. Action upon any application or statement may be withheld pending the furnishing of any or all of the information required in such forms or of such additional information as may be deemed necessary by the Secretary of the Treasury, or the agency authorized or directed to act under this part. There shall be attached to the applications, statements, or reports such instruments as may be

required by the terms thereof and such further instruments as may be required by the Secretary of the Treasury, or by such agency.

§ 54.6 *General provisions affecting licenses and authorizations.* (a) Licenses issued pursuant to the regulations in this part shall be upon the appropriate form prescribed by the Secretary of the Treasury. Licenses shall be nontransferable and shall entitle the licensee to acquire, hold, transport, melt or treat, import, export, or earmark gold only in such form and to the extent permitted by, and subject to the conditions prescribed in, the regulations in this part and such licenses.

(b) Revocation or modification of licenses:[1] Licenses may be modified or revoked at any time in the discretion of the Director of the Mint. In the event that a license is modified or revoked (other than by a modification or revocation of the regulations in this part), the Director of the Mint shall advise the licensee by letter, mailed to the last address of the licensee on file in the Bureau of the Mint. The licensee, upon receipt of such advice, shall forthwith surrender his license as directed. If the license has been modified but not revoked, the Director of the Mint shall thereupon issue or cause to be issued a modified license.

(c) Exclusions: The Director of the Mint may exclude particular persons or classes thereof from the operation of any section of the regulations in this part (except §§ 54.28 to 54.30, inclusive) or licenses issued thereunder or from the privileges therein conferred. Such action shall be binding upon all persons receiving actual notice or constructive notice thereof. Any violation of the provisions of the regulations in this part or any license issued hereunder, shall constitute, but not by way of limitation, grounds for such exclusion.

(d) Requests for reconsideration: A written request for reconsideration of a denial of an application for a license, of a revocation, suspension, or modification of an existing license, or of an exclusion from the authorizations or privileges conferred in any section of the regulations in this part setting forth in detail the reasons for such request, may be addressed to the Director of the Mint, Treasury Department, Washington 25, D. C. In addition, upon written request, the Director will schedule a hearing in the matter at which time there may be brought to the attention of the Bureau of the Mint any information bearing thereon.

(e) No license issued hereunder shall exempt the licensee from the duty of complying with the legal requirements of any State or Territory or local authority.

(f) No license shall be issued to any person doing business under a name which in the opinion of the Secretary of the Treasury or the designated agency issuing the license, is designed or is likely to induce the belief that gold is purchased, treated, or sold on behalf of the United States or for the purpose of carrying out any policy of the United States.

§ 54.7 *General provisions affecting export licenses.*[2] At the time any license to export gold is issued, the Bureau of the Mint, or Federal Reserve bank issuing the same, shall transmit a copy thereof to the collector of customs at the port of export designated in the license. No collector of customs shall permit the export or transportation from the continental United States of gold in any form except upon surrender of a license to export, a copy of which has been received by him from the agency issuing the same (except that licenses on Form TGL–15 (general) covering multiple shipments during a quarterly period are retained by the licensees until the expiration of such period, when they are returned to the Director of the Mint): *Provided, however,* That the export or transportation from the continental United States of fabricated gold may be permitted pursuant to § 54.25 (b) (2) and the export or transportation from the continental United States of gold imported for re-export may be permitted pursuant to §§ 54.32 and 54.33: *And provided further,* That gold held by the Federal Reserve banks under §§ 54.28

[1] Regulations governing procedures for denying an application for a license, for revoking, suspending or modifying a license, and for excluding any person from the privileges conferred in the regulations in this part are set forth in § 92.31 of this chapter.

[2] The regulations in this part shall not be construed as relieving any person from the obligation of compliance with the regulations of the Bureau of Foreign Commerce (formerly the Office of International Trade), (15 CFR Parts 360 to 399), the Bureau of Customs (19 CFR Chapter I), or other laws or regulations relating to the importation or exportation of merchandise, where applicable to imports or exports of gold, or articles containing gold.

to 54.30, inclusive, may be exported for the purposes of such sections without a license. The collector of customs to whom a license to export is surrendered shall cancel such license and return it to the Director of the Mint or to the Mint or the Federal Reserve bank which issued the same. In the event that the shipment is to be made by mail, a copy of the export license shall be sent by the agency issuing the same to the postmaster of the post office designated in the application, who will act under the instructions of the Postmaster General in regard thereto.

§ 54.8 *General provisions affecting import licenses.* No gold in any form imported into the United States shall be permitted to enter until the person importing such gold shall have satisfied the collector of customs at the port of entry that he holds a license authorizing him to import such gold or that such gold may be imported without a license under the provisions of §§ 54.12 to 54.21, inclusive, or §§ 54.28 to 54.30, inclusive. Postmasters receiving packages containing gold will deliver such gold subject to the instructions of the Postmaster General.

§ 54.9 *Forms available.* Any form, the use of which is prescribed in this part, may be obtained at, or on written request to, any United States mint or assay office, or the Director of the Mint, Treasury Department, Washington 25, D. C.

§ 54.10 *Representations by licensees.* Licensees may include in public and private representations or statements the clause "licensed on form TGL-____ (here inserting the number of the form of license held by the licensee) pursuant to the regulations issued by the Secretary of the Treasury," but any representation or statement which might induce the belief that the licensee is acting or is especially privileged to act on behalf of or for the United States, or is purchasing, treating, or selling gold for the United States, or in any way dealing in gold for the purpose of carrying out any policy of the United States, shall be a violation of the conditions of the license.

(a) *Business names and representations generally.* No person doing business under a name which is designed or is likely to induce the belief that gold is being purchased, treated, or sold on behalf of the United States, or any agency thereof, or for the purpose of carrying out any policy of the United States, or making representations or statements which might induce the belief that such person is acting or is especially privileged to act on behalf of or for the United States, or is purchasing, treating or selling gold for the United States, or in any way dealing in gold for the purpose of carrying out any policy of the United States, may acquire, hold, transport, melt, or treat, import, export or earmark any gold under authority of §§ 54.12 to 54.20, inclusive, or §§ 54.21 to 54.27, inclusive.

§ 54.11 *Civil and criminal penalties.*—(a) *Civil penalties.* Attention is directed to section 4 of the Gold Reserve Act of 1934, which provides:

> Any gold withheld, acquired, transported, melted or treated, imported, exported, or earmarked or held in custody, in violation of this Act or of any regulations issued hereunder, or licenses issued pursuant thereto, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law; and in addition any person failing to comply with the provisions of this Act or of any such regulations or licenses, shall be subject to a penalty equal to twice the value of the gold in respect of which such failure occurred (31 U. S. C. 445).

(b) *Criminal punishment.* Attention is also directed to (1) section 5 (b) of the act of October 6, 1917, as amended, which provides in part:

> Whoever wilfully violates any of the provisions of this subdivision or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than $10,000 or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both. As used in this subdivision the term "person" means an individual, partnership, association, or corporation (12 U. S. C. 95a (3)).

This section of the act of October 6, 1917, as amended, is applicable to violations of any provisions of this part and to violations of the provisions of any license, ruling, regulation, order, direction, or instructions issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to the regulations in this part or otherwise under section 5 (b) of the act of October 6, 1917, as amended.

(2) Section 1001 of the United States Criminal Code, which provides:

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and wilfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both (18 U. S. C. 1001).

SUBPART B—CONDITIONS UNDER WHICH GOLD MAY BE ACQUIRED AND HELD, TRANSPORTED, MELTED OR TREATED, IMPORTED, EXPORTED OR EARMARKED

§ 54.12 *Conditions under which gold may be acquired, held, melted, etc.* Gold in any form may be acquired, held, transported, melted or treated, imported, exported, or earmarked only to the extent permitted by and subject to the conditions prescribed in the regulations in this part or licenses issued thereunder.

§ 54.13 *Transportation of gold.* Gold may be transported by carriers for persons who are licensed to hold and transport such gold or who are permitted by the regulations in this part to hold and transport gold without a license.

§ 54.14 *Gold situated outside of the United States.* Gold in any form situated outside of the United States may be acquired, transported, melted or treated, or earmarked or held in custody for foreign or domestic account without the necessity of holding a license.

§ 54.15 *Gold situated in the possessions of the United States.* Gold in any form (other than United States gold coin) situated in places subject to the jurisdiction of the United States beyond the limits of the continental United States may be acquired, transported, melted or treated, imported, exported, or earmarked or held in custody for the account of persons other than residents of the continental United States, by persons not domiciled in the continental United States: *Provided, however,* That gold may be transported from the continental United States to the possessions of the United States only as authorized by §§ 54.25, 54.32, 54.33, or 54.34, or licenses issued pursuant thereto.

§ 54.16 *Fabricated gold.* Fabricated gold as defined in § 54.4 may be acquired, held, transported within the United States or imported without the necessity of holding a license therefor. Fabricated gold may be exported only as authorized in § 54.25 or in a license issued pursuant to that section.

§ 54.17 *Metals containing gold.* Metals containing not more than 5 troy ounces of fine gold per short ton may be acquired, held, transported within the United States, or imported without the necessity of holding a license therefor. Such metals may be melted or treated, and exported only to the extent permitted by and subject to the conditions prescribed in or pursuant to §§ 54.21 to 54.27, inclusive.

§ 54.18 *Unmelted scrap gold.* Unmelted scrap gold may be acquired, held, transported within the United States, or imported, in amounts not exceeding at any one time 50 fine troy ounces of gold content without the necessity of holding a license therefor. Persons holding licenses issued pursuant to paragraph (a) of § 54.25, or acquiring, transporting, importing or holding gold pursuant to § 54.21, may not acquire, transport, import or hold any gold under authority of this section.

§ 54.19 *Gold in its natural state.* (a) Gold in its natural state, as defined in § 54.4, may be acquired, transported within the United States, imported, or held in custody for domestic account only, without the necessity of holding a license therefor.

(b) Gold amalgam which results from the addition of mercury to gold in its natural state, recovered from natural deposits in the United States or a place subject to the jurisdiction thereof, may be heated to a temperature sufficient to separate the mercury from the gold (but not to the melting temperature of gold), without a license by the person who recovered the gold from such deposits, or his duly authorized agent or employee. The retort sponge so resulting may be held and transported by such person without a license: *Provided, however,* That no such person may hold at any one time an amount of such retort sponge which exceeds in fine gold content 200 troy ounces. Such retort sponge may be acquired from such persons:

(1) By the United States;

(2) By persons holding licenses issued pursuant to paragraph (a) of § 54.25;

(3) By other persons provided that the aggregate amount of such retort sponge acquired and held by such other

persons does not exceed at any one time 200 fine troy ounces of gold content.

(c) Persons acquiring retort sponge under paragraph (b) (3) of this section are authorized to dispose of such retort sponge only to the United States and to persons holding licenses issued pursuant to paragraph (a) of § 54.25.

(d) Except as provided in §§ 54.12 to 54.20, inclusive, and in §§ 54.32 and 54.33, gold in its natural state may be melted or treated or exported only to the extent permitted by, and subject to the conditions prescribed in, or pursuant to, §§ 54.21 to 54.27, inclusive.

§ 54.20 *Rare coin.* (a) Gold coin of recognized special value to collectors of rare and unusual coin may be acquired and held, transported within the United States, or imported without the necessity of holding a license therefor. Such coin may be exported, however, only in accordance with the provisions of § 54.25.

(b) Gold coin made prior to April 5, 1933, is considered to be of recognized special value to collectors of rare and unusual coin.

(c) Gold coin made subsequent to April 5, 1933, is presumed not to be of recognized special value to collectors of rare and unusual coin.

SUBPART C—GOLD FOR INDUSTRIAL, PROFESSIONAL, AND ARTISTIC USE

§ 54.21 *Fifty ounce exemption for processors.* (a) Subject to the conditions in paragraph (b) of this section, any person regularly engaged in an industry, profession, or art, who requires gold for legitimate, customary, and ordinary use therein, may, without the necessity of obtaining a Treasury gold license:

(1) Import unmelted scrap gold or acquire gold in any form from any person authorized to hold and dispose of gold in such form and amount under the regulations in this part or a license issued pursuant hereto;

(2) Hold, transport, melt, and treat such gold;

(3) Furnish unmelted scrap gold to the United States, to persons operating pursuant to §§ 54.18 or 54.21, or to the holder of a license issued pursuant to paragraph (a) of § 54.25; and

(4) Furnish melted scrap gold to the United States or to the holder of a license issued pursuant to paragraph (a) of § 54.25 which authorizes the acquisition of such melted scrap gold.

(b) The privileges of paragraph (a) of this section are granted subject to the following conditions:

(1) That the aggregate amount of such gold acquired, held, transported, melted and treated, and imported, does not exceed, at any one time, 50 fine troy ounces of gold content (not including gold which may be acquired, held, etc., without a license under any other section of this part, except § 54.18);

(2) That the aggregate amount of such gold acquired, held, transported, melted and treated, and imported, does not exceed, in any calendar month 350 fine troy ounces of gold content (not including gold which may be acquired, held, etc., without a license under any other section of this part, except § 54.18);

(3) That such gold is acquired and held only for processing into fabricated gold, as defined in § 54.4, by such person in the industry, profession, or art in which he is engaged; and

(4) That full and exact records are kept and furnished in compliance with § 54.26.

(c) Persons acquiring, holding, transporting, melting and treating, and importing gold under authority of this section are not authorized:

(1) To consign gold bullion, including semi-processed gold, to other persons for processing except that scrap gold may, for processing and return in semi-processed form, be consigned to the holder of a license issued pursuant to paragraph (a) of § 54.25, which authorizes the acquisition and melting and treating of such gold;

(2) To furnish melted scrap gold to persons operating pursuant to the provisions of this section or § 54.18;

(3) To dispose of gold held under authority of this section otherwise than in the form of fabricated gold or scrap gold.

(d) Persons holding licenses issued pursuant to paragraph (a) of § 54.25 or acquiring, holding, transporting, or importing, gold pursuant to § 54.18 may not acquire, hold, transport, melt or treat, or import, any gold under authority of this section.

§ 54.22 *Licenses required.* Except as permitted in §§ 54.12 to 54.20, inclusive, and § 54.21, gold may be acquired and held, transported, melted or treated, imported, exported or earmarked for industrial, professional or artistic use only to the extent permitted by licenses issued under § 54.25.

§ 54.23 *Issuance of licenses or general authorizations.* The Director of the

Mint may issue or cause to be issued licenses or other authorizations permitting the acquisition and holding, transportation, melting and treating, importing and exporting of gold which the Director is satisfied is required for legitimate and customary use in industry, profession, or art, by persons regularly engaged in the business of furnishing or processing gold for industry, profession, or art, or for sale to the United States.

§ 54.24 *Applications.* Every application for a license under paragraph (a) of § 54.25 shall be made on Form TG–12 (except that applications for export licenses shall be made on Form TG–15) and shall be filed in duplicate with the Director of the Mint, Treasury Department, Washington, D. C. Every applicant for a license under paragraph (a) of § 54.25 shall state in his application whether or not any applications have been filed by or licenses issued to any partnership, association, or corporation in which the applicant has a substantial interest or, if the applicant is a partnership, association, or corporation, by or to a person having a substantial interest in such partnership, association or corporation. The Director of the Mint shall not issue any license to any person if in the judgment of the Director more than one license for the same purpose will be held for the principal use or benefit of the same persons or interests. Any person licensed under this subpart acquiring a principal interest in any partnership, association, or corporation, holding a license under this subpart for this purpose shall immediately so inform the Director of the Mint.

§ 54.25 *Licenses*—(a) *Licenses for the acquisition and holding, transportation, melting and treating, importing and disposition of gold.* (1) Upon receipt of the application and after obtaining such additional information as may be deemed advisable, the Director of the Mint, shall, if satisfied that gold is necessary for the legitimate and customary requirements of the applicant's industry, profession, art, or business, and that the applicant is qualified in all respects to conduct gold operations in full compliance with the provisions of this part and the provisions of a Treasury gold license, issue or cause to be issued to the applicant a Treasury gold license on the approved form for the kind of industry, profession, art, or business, in which the applicant is engaged.

(2) Licenses issued under this section may authorize the licensee to acquire and hold not to exceed a maximum amount specified therein; to transport such gold, melt or treat it to the extent necessary to meet the requirements of the industry, profession, art or business for which it was acquired and held or otherwise to carry out the purposes for which it is held under license; and to import gold so long as the aggregate amount of all gold held after such importation does not exceed the maximum amount authorized by the license to be held.

(3) Licenses issued under this paragraph do not permit the exportation or transportation from the continental United States of gold in any form. Such exportation or transportation is permitted only to the extent authorized in paragraph (b) of this section or in a separate license issued pursuant to such paragraph.

(b) *Licenses and authorizations for the exporting of gold*—(1) *Semi-processed gold.* Semi-processed gold as defined in § 54.4 may be exported or transported from the continental United States only pursuant to a separate export license. Such licenses shall be issued by the Director of the Mint upon application made on Form TG–15 establishing to the satisfaction of the Director that the gold to be exported is semi-processed gold and that the export or transport from the continental United States is for a specific and customary industrial, professional, or artistic use and not for the purpose of using or holding or disposing of such semi-processed gold beyond the limits of the continental United States as, or in lieu of money, or for the value of its gold content.

(2) *Fabricated gold.* Fabricated gold as defined in § 54.4 may be exported or transported from the continental United States without the necessity of obtaining a Treasury gold license: *Provided, however*, That the Bureau of the Census Schedule B statistical classification number of each specific commodity to be exported shall be plainly marked on the outside of the package or container, the shipper's export declaration shall contain a statement that such gold is fabricated gold as defined in § 54.4 and is being exported pursuant to the authorization contained in this subparagraph, and such additional documentation shall be furnished as may be required by the Bureau of Customs or any other government agency charged with the enforce-

ment of laws relating to the exportation of merchandise from the United States.

(3) *Rare coin.* (i) Rare gold coin as defined in § 54.20, made prior to April 5, 1933, may be exported or transported from the continental United States without the necessity of obtaining a Treasury gold license: *Provided, however,* That the shipper's export declaration shall contain a statement that such coin is rare gold coin and is being exported pursuant to the authorization contained in this subparagraph and such additional documentation shall be furnished as may be requested by the Bureau of Customs or any other government agency charged with the enforcement of laws relating to the exportation of merchandise from the United States.

(ii) Gold coin made subsequent to April 5, 1933, may be exported or transported from the continental United States only under license on Form TGL–11 issued by the Director of the Mint. Application for such a license shall be executed on Form TG–11 and filed with the Director of the Mint, Treasury Department, Washington 25, D. C.

(4) *Other exports of gold.* Export licenses may also be issued upon application made on Form TG–15B in the same manner as prescribed in subparagraph (1) of this paragraph, authorizing the exportation of gold in any form for refining or processing subject to the condition that the refined or processed gold (or the equivalent in refined or processed gold) be returned to the United States, or subject to such other conditions as the Director may prescribe.

§ 54.26 *Investigations; records; subpoenas.* (a) The Director of the Mint is authorized to make or cause to be made such studies and investigations, to conduct such hearings, and to obtain such information as the Director deems necessary or proper to assist in the consideration of any applications for licenses, or in the administration and enforcement of the acts, the orders, and the regulations in this part.

(b) Every person holding a license issued under paragraph (a) of § 54.25, or acquiring, holding or disposing of gold pursuant to the authorizations in §§ 54.18 and 54.21, shall keep full and accurate records of all his operations and transactions with respect to gold, and such records shall be available for examination by a representative of the Treasury Department until the end of the fifth calendar year (or if such person's accounts are kept on a fiscal year basis, until the end of the fifth fiscal year) following such operations or transactions. The records required to be kept by this section shall include the name, address, and Treasury gold license number of each person from whom gold is acquired or to whom gold is delivered, and the amount, date, description and purchase or sales price of each such acquisition and delivery, and any other records or papers required to be kept by the terms of a Treasury Department gold license. If the person from whom gold is acquired, or to whom gold is delivered, does not have a Treasury gold license such records shall show, in lieu of the license number of such person, the section of the regulations in this part pursuant to which such gold was held or acquired by such person. Such records shall also show all costs and expenses entering into the computation of the total domestic value of articles of fabricated or semi-processed gold as defined in § 54.4.

(c) The Director of the Mint (or the officers and employees of the Bureau of the Mint specifically designated by the Director) or any department or agency charged with the enforcement of the acts, the orders, or the regulations in this part, may require any person to permit the inspection and copying of records and other documents and the inspection of inventories of gold and to furnish, under oath or affirmation or otherwise, complete information relative to any transaction referred to in the acts, the orders, or the regulations in this part involving gold or articles manufactured from gold. The records which may be required to be furnished shall include any records required to be kept by this section and, to the extent that the production of such information is necessary and appropriate to the enforcement of the provisions of the acts, the orders, and the regulations in this part, or licenses issued thereunder, any other records, documents, reports, books, accounts, invoices, sales lists, sales slips, orders, vouchers, contracts, receipts, bills of lading, correspondence, memoranda, papers and drafts, and copies thereof, either before or after the completion of the transaction to which such records refer.

(d) The Director of the Mint may administer oaths and affirmations and may, whenever necessary, require any person holding a license under § 54.25 or acquiring, holding or disposing of gold pur-

suant to the authorizations of §§ 54.18 or 54.21, or any officer, director, or employee of such person, to appear and testify or to appear and produce any of the records specified in paragraph (c) of this section or both, at any designated place.

§ 54.27 *Reports.* Every person holding a license issued pursuant to paragraph (a) of § 54.25 shall make reports on the appropriate report form specified in such license for the six months' periods ending on the last days of June and December, respectively, and shall file such reports with the Director of the Mint, Treasury Department, Washington 25, D. C. Reports shall be filed within twenty-five days after the termination of the period for which such reports are made.

SUBPART D—GOLD FOR THE PURPOSE OF SETTLING INTERNATIONAL BALANCES AND FOR OTHER PURPOSES

§ 54.28 *Acquisitions by Federal Reserve banks for purposes of settling international balances, etc.* The Federal Reserve banks may from time to time acquire from the United States by redemption of gold certificates in accordance with section 6 of the Gold Reserve Act of 1934 such amounts of gold bullion as, in the judgment of the Secretary of the Treasury, are necessary to settle international balances or to maintain the equal purchasing power of every kind of currency of the United States. Such banks may also acquire gold (other than United States gold coin) abroad or from private sources within the United States.

§ 54.29 *Dispositions by Federal Reserve banks.* The gold acquired under § 54.28 may be held, transported, imported, exported, or earmarked for the purposes of settling international balances or maintaining the equal purchasing power of every kind of currency of the United States: *Provided*, That if the gold is not used for such purposes within 6 months from the date of acquisition, it shall (unless the Secretary of the Treasury shall have extended the period within which such gold may be so held) be paid and delivered to the Treasurer of the United States against payment therefor by credits in equivalent amounts in dollars in the accounts authorized under the sixteenth paragraph of section 16 of the Federal Reserve Act, as amended (48 Stat. 339; 12 U. S. C. 467).

§ 54.30 *Provisions limited to Federal Reserve banks.* The provisions of this subpart shall not be construed to permit any person subject to the jurisdiction of the United States, other than a Federal Reserve bank, to acquire gold for the purposes specified in this subpart or to permit any person to acquire gold from a Federal Reserve bank except to the extent that his license issued under this part specifically so provides.

SUBPART E—GOLD FOR OTHER PURPOSES NOT INCONSISTENT WITH THE PURPOSES OF THE GOLD RESERVE ACT OF 1934 AND THE ACT OF OCTOBER 6, 1917, AS AMENDED

§ 54.31 *Licenses required.* Gold may be acquired and held, transported, melted or treated, imported, exported, or earmarked for purposes other than those specified in §§ 54.21 to 54.30, inclusive, not inconsistent with the purposes of the acts only to the extent permitted in §§ 54.12 to 54.20 inclusive, and § 54.32, or under a license issued under §§ 54.33 or 54.34.

§ 54.32 *Gold imported in gold-bearing materials for re-export.* (a) Gold refined (or the equivalent to gold refined) from gold-bearing materials imported into the United States for refining and re-export may be re-exported to the foreign exporter or pursuant to his order, without the necessity of obtaining a Treasury gold export license, subject to the following conditions:

(1) The imported gold-bearing material either (i) was imported into the United States from a foreign resident or a foreign organization, or (ii) was mined by a branch or other office of a United States organization and imported into the United States from such branch or office;

(2) The importer has no right, title, or interest in the gold refined from the imported gold-bearing material other than through its branch or office which is the foreign exporter as provided in subparagraph (1) (i) and (ii) of this paragraph, and the importer will not participate in the sale of such refined gold or receive any commission in connection with the sale of such refined gold;

(3) The refined gold is to be re-exported to the foreign exporter or, pursuant to his order, to a foreign resident or foreign organization; and

(4) Such gold is imported, acquired, and held, transported, melted and treated, as permitted in §§ 54.12 to 54.20, inclusive, or in accordance with a license issued under § 54.25, and in full

compliance with the provisions of paragraph (b) of this section.

(b) *Procedural requirements.* Persons exporting gold pursuant to paragraph (a) of this section shall comply with the following requirements:

(1) *Notation upon entry.* Upon the formal entry into the United States of any gold-bearing materials, the importer shall declare to the collector of customs at the port where the material is formally entered that the importation is made with the intention of exporting the gold refined therefrom to the foreign exporter, or pursuant to his order. The collector shall make on the entry a notation to this effect and forward a copy of the entry to the United States assay office at New York or to the United States mint at San Francisco, whichever is designated by the importer.

(2) *Sampling and assaying.* Promptly upon the receipt of each importation of gold-bearing material at the plant where it is first to be treated, it shall be weighed, sampled, and assayed for the gold content. A reserve commercial sample shall be retained by such plant for at least 1 year from the date of importation, unless the assay is sooner verified by the Bureau of the Mint.

(3) *Plant records.* The importer shall cause an exact record, covering each importation, to be kept at the plant of first treatment. The records shall show the gross wet weight of the importation, the weight of containers, if any, the net wet weight, the percentage and weight of moisture, the net dry weight, and the gold content shown by the settlement assay. A true copy of such record shall be filed promptly with the assay office in New York or the mint at San Francisco, whichever has been designated to receive a copy of the entry. The plant records herein required to be kept shall be available for examination by a representative of the Treasury Department for at least 1 year after the date of the disposition of such gold.

(4) *Limitations on exports.* The gold refined (or the equivalent to gold refined) from imported gold-bearing materials shall be exported not later than seven months from the date of entry of such gold-bearing materials and shall not exceed the amount of gold shown on the refiner's settlement sheet as having been recovered from the imported gold-bearing material: *Provided*, That, such gold may be exported prior to the procurement of the refiner's settlement sheet in an amount not in excess of 90 percent of a written estimate of the gold content of the gold-bearing material based upon the actual test assay of such material.

(5) *Export declaration and certificate.* The exporter shall state on his export declaration that the shipment is gold refined (or the equivalent to gold refined) from imported gold-bearing materials which is being exported pursuant to the authorization contained in this section, and shall attach to his export declaration a certificate properly executed in duplicate on Form TG–16 and two true copies of the refiner's settlement sheet. In the event that exportation is made prior to procurement of the settlement sheet, duplicate certified copies of the report of the actual test assay of the gold-bearing material, together with a statement showing that an exportation with respect to such material is necessary prior to the time the settlement sheet can be procured, shall be submitted by the exporter with his export declaration and certificate on Form TG–16. The collector of customs shall forward a copy of the certificate on Form TG–16 and a copy of the settlement sheet, or the report of the test assay, to the United States assay office at New York or the United States mint at San Francisco, whichever has been designated to receive a copy of the entry.

§ 54.33 *Gold imported for re-export*[1]—(a) *Exportation promptly without license.* Gold may be imported and transported for prompt export, and exported without the necessity of holding a license, provided the gold is, in fact, exported promptly and remains under customs custody throughout the period during which it is within the customs limits of the United States. Upon the arrival in the United States of gold imported for re-export pursuant to the provisions of this section, the importer shall declare to the collector of customs at the port of entry that it will be re-exported promptly. The collector of customs shall make a notation of this declaration upon the entry and forward a copy of the entry to the Director of the Mint.

(b) *Exportation pursuant to license.* In the event that the export of any gold imported pursuant to this section is delayed due to the unavailability of facili-

[1] Attention is directed to Order No. 29 of the Foreign-Trade Zones Board (17 F. R. 5316; 15 CFR 400.803) which is applicable to gold.

ties for the onward transportation of such gold, the Director of the Mint may, subject to the following provisions, issue licenses on form TGL–17 authorizing the importation, holding, transportation, and exportation of gold which the Director is satisfied is, in fact, imported for re-export promptly upon the completion of necessary arrangements for the transportation of such gold.

(1) Every application for a license under this section shall be made on form TG–17 and shall be filed with the Director of the Mint.

(2) Upon receipt of the application and after making such investigation of the case as may be deemed advisable, the Director of the Mint, if satisfied that the gold was, in fact, imported for re-export promptly upon the completion of necessary arrangements for the transportation of such gold, shall issue to the applicant a license on form TGL–17.

§ 54.34 *Licenses for other purposes.* The Secretary of the Treasury, with the approval of the President, shall issue licenses authorizing the acquisition, transportation, melting or treating, importing, exporting, or earmarking of gold, for purposes other than those specified in §§ 54.21 to 54.30, inclusive, 54.32 and 54.33, which, in the judgment of the Secretary of the Treasury, are not inconsistent with the purposes of the acts, subject to the following provisions:

(a) *Applications.* Every application for a license under this section shall be made on form TG–18 and shall be filed in duplicate with the Federal Reserve bank for the district in which the applicant resides or has his principal place of business. Upon receipt of the application and after making such investigation of the case as it may deem advisable, the Federal Reserve bank shall transmit to the Secretary of the Treasury the original of the application, together with any supplemental information it may deem appropriate. The Federal Reserve bank shall retain the duplicate of the application for its records.

(b) *Licenses.* If the issuance of a license is approved, the Federal Reserve bank which received and transmitted the application will be advised by the Secretary of the Treasury and directed to issue a license on form TGL–18. If a license is denied, the Federal Reserve bank will be so advised and shall immediately notify the applicant. The decision of the Secretary of the Treasury with respect to the granting or denying of a license shall be final. If a license is granted, the Federal Reserve bank shall thereupon note upon the duplicate of the application therefor, the date of approval and issuance and the amount of gold specified in such license.

(c) *Reports.* Within 7 business days of the date of disposition of the gold acquired or held under a license issued under this section, or within 7 business days of the date of export, if such exportation is authorized, the licensee shall file a report in duplicate on form TGR–18 with the Federal Reserve bank through which the license was issued. Upon receipt of such report, the Federal Reserve bank shall transmit the original thereof to the Secretary of the Treasury, and retain the duplicate for its records.

SUBPART F—PURCHASE OF GOLD BY MINTS

§ 54.35 *Purchase by mints.* The mints, subject to the conditions specified in the regulations in this part, particularly § 54.36 to § 54.44, and the general regulations governing the mints, are authorized to purchase:

(a) Gold recovered from natural deposits in the United States or any place subject to the jurisdiction thereof, which shall not have entered into monetary or industrial, professional, or artistic use, including gold contained in deposits of newly mined domestic silver;

(b) Gold contained in deposits of silver eligible for deposit at a mint for return in bar form;

(c) Scrap gold as defined in § 54.4;

(d) Gold refined from sweeps purchased from a United States mint;

(e) Gold (other than United States gold coin) imported into the United States after January 30, 1934;

(f) Gold refined (or the equivalent to gold refined) from imported gold-bearing material; and

(g) Such other gold (other than United States gold coin or gold derived therefrom) as may be authorized from time to time by rulings of the Secretary of the Treasury.

Provided, however, That no gold shall be purchased by any mint under the provisions of this subpart which, in the opinion of the mint, has been held at any time in noncompliance with the acts, the orders, or any regulations, rulings, instructions, or licenses issued thereunder, including the regulations in this part, or in noncompliance with section 3 of the act of March 9, 1933, or any orders,

regulations, rulings, or instructions issued thereunder.*

§ 54.36 *Gold recovered from natural deposits in the United States or any place subject to the jurisdiction thereof, including gold contained in deposits of newly mined domestic silver.* (a) The mints may purchase gold under § 54.35 (a) only if the deposit of such gold is accompanied by a properly executed statement as follows:

(1) A statement on form TG–19 shall be filed with each delivery of gold by persons who have recovered such gold by mining or panning in the United States or any place subject to the jurisdiction thereof.

(2) A statement on form TG–20 shall be filed with each delivery of gold by persons who have recovered such gold from gold-bearing materials in the regular course of their business of operating a custom mill, smelter, or refinery.

(3) A statement on form TG–21 together with a statement giving the names of the persons from whom gold was purchased, the amount and description of each lot of gold purchased, the location of the mine or placer deposit from which each lot was taken, and the period within which such gold was taken from the mine or placer deposit, shall be filed with each such delivery of gold by persons who have purchased such gold directly from the persons who have mined or panned such gold.

(b) In addition, the depositors shall show that the gold was acquired, held, melted and treated, and transported by them in accordance with a license issued pursuant to § 54.25 or that such acquisition, holding, melting and treating, and transportation is permitted under §§ 54.12 to 54.20, inclusive, without the necessity of holding a license.

§ 54.37 *Gold contained in deposits of silver.* Gold contained in deposits of silver, eligible at a mint for return in bar form, may be purchased by the mints: *Provided*, That the gold was not mixed with such silver for the purposes of selling gold to the United States which was not eligible for purchase by the United States under paragraphs (a), (c), (d), (e), or (f) of § 54.35.

§ 54.38 *Scrap gold.* Deposits of scrap gold must be accompanied by a statement executed on form TG–22. In addition the depositors of such gold shall establish to the satisfaction of the mint that the gold was acquired, held, and transported by them in accordance with the regulations in this part or a license issued pursuant thereto.

§ 54.39 *Gold refined from sweeps purchased from a United States mint.* Gold refined from sweeps purchased from a United States mint shall be purchased only if the deposit of such gold is accompanied by a statement executed on form TG–28.

§ 54.40 *Imported gold.* Except for gold which may be purchased in accordance with the provisions of § 54.41, the mints are authorized to purchase only such gold imported into the United States as has been in customs custody throughout the period in which it shall have been situated within the customs limits of the continental United States, and then only subject to the following provisions:

(a) *Notation upon entry.* Upon formal entry into the United States of any gold intended for sale to a mint under this subpart, the importer shall declare to the collector of customs at the port of entry where the gold is formally entered that the gold is entered for such sale. The collector shall make a notation of this declaration upon the entry and forward a copy to the mint designated by the importer.

(b) *Statement by importer.* Upon the deposit of the gold with the mint designated by the importer, the importer shall file a statement executed in duplicate on form TG–23.

§ 54.41 *Gold refined from imported gold-bearing material.* The mints are authorized to purchase gold refined (or the equivalent to gold refined) from gold-bearing material which has been either imported into the United States pursuant to a license issued under paragraph (a) of § 54.25 for sale of the gold derived therefrom to a designated mint, or imported into the United States under § 54.32 (notwithstanding the declaration made by the importer upon the entry into the United States of such gold-bearing material as required by § 54.32 (b)), whether or not such gold or gold-bearing material has been in customs custody throughout the period it has been in the

* Gold which has been so held in noncompliance with section 3 of the act of March 9, 1933, or the Order of the Secretary of the Treasury of December 28, 1933, may, however, be purchased in accordance with the Instructions of the Secretary of the Treasury of January 17, 1934 (§ 53.1 of this chapter), subject to the rights reserved in such Instructions and at the price stated therein.

customs limits of the continental United States, subject to the following provisions:

(a) In the case of gold-bearing material imported pursuant to license issued under paragraph (a) of § 54.25, the importer shall declare to the collector of customs at the port of entry that the gold-bearing material is being imported for sale of the gold refined therefrom to a designated mint; the collector shall make on the entry a notation to this effect and forward a copy thereof to the mint designated by the importer.

(b) In the case of gold-bearing material imported under § 54.32, if the gold refined therefrom is offered to a mint other than the mint at San Francisco or the assay office at New York, the importer shall have caused the copy of the entry described in § 54.32 (b) to be forwarded to the mint to which he is offering the gold for sale.

(c) Before any gold may be purchased under this section, the requirements of § 54.32 (b) (2) and (3) must be shown to have been complied with: *Provided, however*, That any person importing gold-bearing materials for sale of the gold refined therefrom to a mint other than the mint at San Francisco or the assay office at New York shall have caused the true copy of the record described in § 54.32 (b) (3) to be forwarded to the mint to which he is offering the gold for sale.

(d) Upon presentation of the gold to a mint or assay office for purchase, the importer shall file a statement executed in duplicate on form TG-26, together with two true copies of the settlement sheet covering the gold-bearing material imported.

(e) No gold shall be accepted for purchase under authority of this paragraph unless it is delivered to the mint and all of the terms hereof complied with within seven months from the date of the formal entry into the United States of the gold-bearing material from which it was extracted.

§ 54.42 *Deposits.* Deposits of gold described in § 54.35 and rulings issued thereunder will be received in amounts of not less than 1 troy ounce of fine gold when deposited in the following forms: Nuggets, grains, and dust which are in their native state free from earth and stone, or nearly so, retort sponge, lumps, coins, bars, kings, buttons, and scrap gold as defined in § 54.4. All deposits containing 800 thousandths or more of base metal shall be rejected. In the case of gold forwarded to a mint by mail or express, a letter of transmittal shall be sent with each package. When there is a material discrepancy between the actual and invoice weights of a deposit, further action in regard to it will be deferred pending communication with the depositor.

§ 54.43 *Rejection of gold by mint.* Deposits of gold which do not conform to the requirements of §§ 54.35 to 54.42, inclusive, or which otherwise are unsuitable for mint treatment shall be rejected and returned to the person delivering the same at his risk and expense. The mints shall not purchase gold under the provisions of this subpart from any person who has failed to comply with the regulations in this part or the terms of a Treasury gold license. Any deposit of gold which has been held in noncompliance with the acts, the orders, or any regulations, rulings, instructions or licenses issued thereunder, including the regulations in this part, or in noncompliance with section 3 of the act of March 9, 1933, or any orders, regulations, rulings, or instructions issued thereunder, may be held subject to the penalties provided in § 54.11 or section 3 of the act of March 9, 1933.

§ 54.44 *Purchase price.* The mints shall pay for all gold purchased by them in accordance with this subpart $35.00 (less one-fourth of 1 percent) per troy ounce of fine gold, but shall retain from such purchase price an amount equal to all mint charges. This price may be changed by the Secretary of the Treasury without notice other than by notice of such change mailed or telegraphed to the mints.

SUBPART C—SALE OF GOLD BY MINTS

§ 54.51 *Authorization to sell gold.* Each mint is authorized to sell gold to persons holding licenses issued pursuant to § 54.25, or to persons authorized under § 54.21 to acquire such gold for use in industry, profession, or art: *Provided, however*, That except in justified cases, no mint may sell gold to any person in an amount which, in the opinion of such mint, exceeds the amount actually required by such person for a period of 3 months. Prior to the sale of any gold under this subpart, the mint shall require the purchaser to execute and file in duplicate a statement on form TG-24, or, if such purchaser is in the business of furnishing gold for use in industries, professions, and arts, on form TG-25.

The mints are authorized to refuse to sell gold in amounts less than 25 ounces, and shall not sell gold under the provisions of this subpart to any person who has failed to comply with the regulations in this part or the terms of his license.

§ 54.52 *Sale price.* The mints shall charge for all gold sold under this article $35.00 (plus one-fourth of 1 percent) per troy ounce of fine gold plus the regular mint charges. This price may be changed by the Secretary of the Treasury without notice other than by notice of such change mailed or telegraphed to the mints.

SUBPART H—TRANSITORY PROVISIONS

§ 54.70 *Legal effect of amendment of regulations.* This amendment of the Gold Regulations shall not affect any act done or any right accruing or accrued or any suit or proceeding had or commenced in any civil or criminal cause prior to the effective date of this amendment but all such liabilities shall continue and may be enforced as if said amendment had not been made.

NOTE: The record-keeping and reporting requirements of these regulations have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

[SEAL] H. CHAPMAN ROSE,
Acting Secretary of the Treasury.

[F. R. Doc. 54-5329; Filed, July 13, 1954, 8:48 a. m.]

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United States Court of Appeals for the Ninth Circuit.

Gladys Laycock,
Appellant,
vs.
Frank J. Kenney,
Appellee.
No. 16,170.

Appeal from the United States District Court for the District of Oregon.

(Proceedings Had in the United States Court of Appeals for the Ninth Circuit.)

United States Court of Appeals for the Ninth Circuit.

Excerpt from Proceedings of Monday, June 8, 1959.

Before: Hamley, Hamlin & Jertberg, Circuit Judges.

Order of Submission.

Ordered appeal herein argued by Mr. Paul Bakewell, Jr., counsel for the Appellant, and by Mr. C. E. Luckey, U. S. Attorney, counsel for the Appellee, and submitted to the Court for consideration and decision.

United States Court of Appeals for the Ninth Circuit.

Excerpt from Proceedings of Tuesday, September 1, 1959.

Before: Hamley, Hamlin and Jertberg, Circuit Judges.

Order Directing Filing of Opinion and Filing and Recording of Judgment.

Ordered that the typewritten opinion this day rendered by this Court in above cause be forthwith filed by the Clerk, and that a Judgment be filed and recorded in the minutes of the Court in accordance with the opinion rendered.

APPENDIX B.

United States Court of Appeals
for the Ninth Circuit.

Gladys Laycock,
Appellant,
vs.
Frank J. Kenney,
Appellee.

No. 16,170
Sept. 1, 1959

Appeal from the United States District Court
for the District of Oregon.

Opinion.

Before: Hamley, Hamlin and Jertberg, Circuit Judges.

Jertberg, Circuit Judge.

Appellant is the owner of the majority interest in gold mining property situated in Grant County, Oregon, which she alleges has been extensively developed to a point where 234,000 tons of ore are blocked out. She further alleges that she has found, as many other gold mine operators in the United States have found, that the ore cannot be economically mined and processed at the current price set for gold under the regulations of the United States Treasury Department, with the result her mine cannot be operated at a profit and remains idle with practically no resale value as a gold mine.

Claiming that the regulations directly and proximately resulted in a loss of profits and depreciation of the value of the property, appellant sought damages against the United States in a previous suit which was dismissed by trial court. This Court affirmed the dismissal, on the grounds there was no jurisdiction, the government's consent to be sued on matters arising from acquisition of gold having been expressly withdrawn by an Act of Congress, 49 Stat. 938, 939, 31 U. S. C. A., § 773b. See **Laycock v. United States** (1956), 9 Cir., 230 F. 2d 848, c. d. 351 U. S. 964.

Subsequently appellant initiated the present action challenging the authority of the Secretary of the Treasury under Section 3 of the Gold Reserve Act of 1934 (31 U. S. C. 442), and seeking declaratory relief and an injunction to restrain the appellee, a Treasury agent for the State of Oregon, from enforcing the Treasury regulations which regulate the refining and dealing in gold.

The trial court found that the regulations controlling the entire domestic stock of existing gold and all additions thereto and subtractions therefrom are reasonably related to the duty of the Secretary of the Treasury to maintain all forms of money issued or coined by the United States at a parity of value with the dollar of gold nine-tenths fine of the weight determined under the provisions of 31 U. S. C. 821, which has been declared to be the standard unit of value of money by Congress, acting within its constitutional power to "regulate the value" of money. The regulations being valid, the court granted the motion to dismiss for failure to state a claim upon which relief could be granted since such motion could be granted only if the regulations were invalid. It further ordered that the judgment of dismissal should operate as an adjudication on the merits.

Before we turn to the merits, we must first determine whether the appellant's complaint which named as defend-

ant only a Treasury agent is sufficient to invoke the jurisdiction of the Federal District Court, even though it failed to name either the agent's superior, the Secretary of the Treasury, or the United States. The trial court apparently assumed it had jurisdiction, mentioning in its memorandum opinion only that appellant had invoked the "jurisdiction of the Court under Article III, Section 2 of the Constitution and 28 U. S. C., § 1331, seeking a declaratory judgment and injunctive relief against the defendant qua individual."

The government contends that the United States and the Secretary of the Treasury are indispensable parties and urges that the failure of the appellant to name them should result in a dismissal of her action without a consideration of the merits. See **Neher v. Harwood** (1942), 9 Cir., 128 F. 2d 846, 847. The government's position is that the United States and the Secretary of the Treasury are indispensable parties when the relief sought by the plaintiff would "substantially" interfere with "public administration". This argument is based on a supposition proposed by Justice Douglas in **Land v. Dollar** (1947), 330 U. S. 731, 738, when he said:

> "The 'essential nature and effect of the proceeding' may be such as to make plain that the judgment sought would expend itself on the public treasury or domain, or interfere with the public administration. **Ex parte New York**, 256 U. S. 490, 500, 502. If so, the suit is one against the sovereign. **Mine Safety Co. v. Forrestal**, supra, p. 374."

But **Ex parte New York** and **Mine Safety Co. v. Forrestal** are cases in which the sovereign was declared to be an indispensable party because the judgment sought would expend itself on the public treasury. Neither case mentions any interference with "public administration." Justice Douglas repeated the phrase in **Williams v. Fanning** (1947), 332 U. S. 440, but there decided that the Postmaster

General was not an indispensable party in the action for an injunction against one of his postmasters since the "decree order to be effective need not require the Postmaster General to do a single thing." Id. 493. Aside from the dictum of Justice Douglas, the government has not cited any authority in which it was held that in a suit against an individual government officer the United States or his superiors were indispensable parties because the relief sought would "interfere with public administration". Nevertheless, the government asks us to deny jurisdiction in this case on the ground that the relief sought would "substantially interfere with public administration". Neither the words of Justice Douglas nor the cases cited require such a result.

The other cases cited by the government as requiring either the government or the Secretary to be joined are clearly distinguishable. In **Larson v. Domestic and Foreign Commerce Corp.** (1949), 337 U. S. 682, 691, no claim was made, as it was here, that the defendant, who was a United States agent, was acting unconstitutionally or pursuant to an unconstitutional grant of power. In **Ogden River Water Users Assn. v. Weber Basin Water Conservation Dist.** (1956), 10 Cir., 238 F. 2d 934, the claim was made that the defendants were violating plaintiff's rights under the Fifth Amendment by taking plaintiff's property without due process of law. The court specifically pointed out the plaintiff had adequate remedies to obtain recourse for any damages. Id. page 942. Here we have previously held that plaintiff has no such remedy for damages. **Laycock v. United States**, supra, 850.

The appellant's complaint alleges that the defendant's threatened enforcement of the Treasury regulation is unconstitutional, is without authority of law, and the judgment sought requires no affirmative act on the part of the Secretary of the Treasury, the expenditure of funds or any

other affirmative relief. There is no doubt that if granted, the relief sought would expend itself solely and completely on the named defendant. The suit rests upon the charge of lack of authority, both constitutional and statutory, and its merits must be determined accordingly; it is not a suit against the United States. **Harmon v. Bruckner** (1958), 355 U. S. 579, 581-582; **Stark v. Wichard** (1944), 321 U. S. 288, 318; **Missouri v. Holland** (1920), 252 U. S. 416, 431; **Philadelphia Co. v. Stimson** (1912), 223 U. S. 603, 619-620. By the same token it is not a suit requiring any affirmative action either by the United States or any government official, and for that reason as well neither the United States nor any of the defendant's superior officers need be named. **Hynes v. Grimes Packing Co.** (1949), 337 U. S. 86, 97-98; **Williams v. Fanning**, supra, pp. 493-494; **Land v. Dollar**, supra, p. 737; **Colorado v. Toll** (1925), 268 U. S. 228, 230; **United States v. Lee** (1882), 106 U. S. 196, 218-220. Clearly, appellant's complaint alleges sufficient facts to permit the district court to proceed to the merits on which its jurisdiction must rest, without joining either the United States or the agent's superior officers. **Larson v. Domestic and Foreign Commerce Corp.**, supra, 690; **Land v. Dollar**, supra, 739.

The government suggests that the relief sought would expend itself on the public treasury. Just how the government does not state. No money judgment is sought, and since the appellant is not presently supplying gold to the Treasury anyway, there would be no direct consequences. Any other effect on the Treasury would be too conjectural upon which to deny jurisdiction.

The government's final point dealing with jurisdiction is that the government has withdrawn consent to be sued under 31 U. S. C. 773b, and therefore this suit cannot be brought. But where, as here, the suit is in fact directed not at the government but at an individual who is allegedly

acting without authority, and the relief sought requires nothing affirmative from the government, the government itself is not being sued so no question of sovereign immunity arises; the unauthorized or unconstitutional acts of the officer are not then the acts of the sovereign. **Larson v. Domestic and Foreign Commerce Corp.**, supra, 690, and cases collected in Justice Frankfurter's dissent at pages 710, 714-715, 731-732; **Land v. Dollar**, supra, p. 138.

The jurisdiction of the district court having been properly invoked, we turn now to the merits. In doing so it must be clearly understood that we are not dealing here with the wisdom of adopting one course of conduct of the monetary system of the nation over another, or adopting one economic theory over another. We are concerned only with the question of power, the power to choose a policy, not the wisdom of its choice. **Norman v. B. & O. R. Co.** (1935), 294 U. S. 240, 297. The question presented, then, is simply whether the regulations which the defendant seeks to enforce are authorized by power conferred on the Secretary of the Treasury by Congress in the exercise of a power which in turn it has derived from the United States Constitution.

Appellant's arguments can be classified into two categories, first, that certain results of the regulations are not authorized by Congress, and second, if authorized then the authority is beyond the constitutional power of Congress.

We will consider first whether the regulations fall within the authority granted by Congress. With the country in the grip of a disastrous economic crisis, in which the purchasing power of the dollar was constantly increasing, causing a resulting depression in the general price level, the Administration and Congress during 1933 and 1934 sought by various means to achieve a less variable dollar, restore a fairer price level, and to generally improve the

country's financial and monetary system. This activity, which included the redemption of gold coin, bullion and certificates from all banks and individuals except the Federal Reserve Bank,[1] culminated in the passage of the Gold Reserve Act of 1934, 48 Stat. 337, see 31 U. S. C., § 440, enacted January 30, 1934. Section 2 of the Act amended the Federal Reserve Act[2] by vesting title to gold in the Federal Reserve System in the government under the control of the Treasury, permitting the Federal Reserve Bank to hold only gold certificates.

Section 3 of the Act (31 U. S. C., § 442) provides as follows:

> "The Secretary of the Treasury shall, by regulations issued hereunder, with the approval of the President, prescribe the conditions under which gold may be acquired and held, transported, melted or treated, imported, exported, or earmarked: (a) for industrial, professional, and artistic use; (b) by the Federal Reserve banks for the purpose of settling international balances; and (c) for such other purposes as in his judgment are not inconsistent with the purposes of this act. Gold in any form may be acquired, transported, melted or treated, imported, exported, or earmarked or held in custody for foreign or domestic account (except on behalf of the United States) only to the extent permitted by, and subject to the conditions prescribed in, or pursuant to, such regulations. Such regulations may exempt from the provisions of this section, in whole or in part, gold situated in places beyond the limits of the continental United States.

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[1] See Emergency Congressional Legislation, 48 Stat. 1, enacted March 1, 1933 and Executive Orders issued thereunder: 6102, April 5, 1933; 6111, April 30, 1933; and 6260, August 28, 1933.

[2] See 12 U. S. C., §§ 213, 411-415, 417, 467.

"Jan. 30, 1934, c. 6, § 3, 48 Stat. 340, 1946 Proc. 2695, 11 F. R. 7517, 60 Stat. 1352."

The present regulations issued by the Secretary pursuant to this section are in essentially the same form as those originally issued under the Act (See 31 C. F. R., Chap. I, Part 54). They provide for a licensing system by which all gold in the United States, except in its natural state, is regulated. Section 12 of the regulations prohibits all dealing in gold or its processing except as expressly authorized in the regulations or as licensed in accordance with the regulations. Section 19 specifically authorizes the acquisition or transportation of gold within the United States in its "natural state" without the necessity of holding a license. "Natural state" is defined in Section 4 (11) as "gold recovered from natural sources which has not been melted, smelted, or refined or otherwise treated by heating or by a chemical or electrical process." But under Section 22 gold other than in the natural state can be "acquired, held, transported, melted or treated, imported or exported, or earmarked for industrial, professional or artistic use only to the extent permitted by licenses issued to persons who have such need." Therefore, as the government points out, the possessor of gold ore—gold in its "natural state"—can sell it freely within the United States. Appellant in her brief, however, contends that such gold "ore" is not a marketable commodity. Be that as it may, the fact remains that if the gold is processed in any way, it must be done under a license and sold only to persons licensed to purchase, or under Section 21, to persons not licensed, if they need only a specified small amount for use in industry, profession or art. Under Section 35, the United States mints are authorized to purchase gold, including that recovered from natural deposits in the United States, provided it has never been held at any time in noncompliance with the gold regulations, and has been "acquired, held, melted or treated" in accordance with a duly

issued Treasury license. Section 44 authorizes the mints to pay $35.00 per Troy ounce of fine gold, less mint charges, for all gold it purchases. Section 51 authorizes the mints to sell gold to persons licensed to purchase it at $35.00 per Troy ounce.

Appellant urges that these regulations insofar as they set the price of gold are without authority of law, claiming that no United States statute even purports to set the price of gold or of any other metal, or to authorize any department of the government to do so. The government admits that the price appellant may receive for her gold results, in substance, from the Treasury's operation in buying and selling gold domestically in all authorized transactions and, internationally, in the settlement of international balances, all at $35.00 per fine Troy ounce, but adds that "it cannot be said that the enforcement of the gold regulations requires appellant to sell her gold to the government at a fixed price" and that "if it is sold privately there is no provision in the regulations prescribing the price that may be realized." While this statement of the government is technically correct, the realities should be recognized. Any purchaser appellant might find who under the regulations is able to purchase gold at all is also able to purchase it from the United States government at $35.00 per Troy ounce. Obviously appellant is not going to sell her gold for any higher price. The net result is, of course, that the regulations effectively set the price of gold in the United States.

A careful study of the Gold Reserve Act shows that while price control is not specifically authorized, the plain language clearly grants authority to the Secretary of the Treasury to "prescribe the conditions under which gold may be acquired and held . . ." (Sec. 3, 48 Stat. 340, 31 U. S. C., §442) and to "purchase and sell gold in any amounts, at home or abroad, in such manner and at such

rates and upon such terms and conditions as he may deem most advantageous to the public interest" (Secs. 8, 9, 48 Stat. 341, 31 U. S. C., §§ 733, 734).

Appellant argues this authority permits the Secretary to act only as any other purchaser or seller of any commodity, bargaining for the commodity and its price. With this we cannot agree. A grant of authority which on one hand grants full authority to prescribe how gold is to be acquired by any person subject to the jurisdiction of the United States and on the other hand grants authority to purchase and sell gold upon terms and conditions most advantageous to the public interest cannot be said to contemplate a free market in gold. Such authority clearly does not require the Treasury to descend into the market places to purchase gold; it makes the Treasury the ruler of the market place, if not the market itself.

Appellant further attacks the regulations on the grounds that the Secretary has authority to regulate only "monetary gold", and is without authority to fix the price of the metal, the commodity, gold.

In support of this limitation on the Secretary's power, appellant quotes the specified purposes of the Gold Reserve Act which were "to protect the currency system of the United States and to provide for the better use of the monetary gold stock of the United States," and the request of the President in his message to Congress of January 15, 1934, that Congress should "vest in the United States government title to all supplies of American-owned monetary gold."[3] Appellant points out that nothing was said in these authorizations about gold that might be produced or processed in the future. From this appellant argues that the Act was only intended to abolish gold as money in the United States, and to that end "to provide for the

[3] Federal Reserve Bulletin, February, 1934, Vol. 20, No. 2, p. 62

better use of the monetary gold stock of the United States." To accomplish this appellant claims the Act authorized regulations which could deal only with monetary gold, and did not authorize the Secretary to regulate the commodity, gold. Such a distinction, however, is not to be found in the Act itself. Section 3 (see above) in authorizing the regulations, refers to "gold" and "gold in any form", and Section 4, in prescribing the penalties for violation of the Act, speaks of "any gold". Such terms can hardly be construed to mean just "monetary gold," but on the contrary show the all-inclusive character of the enactment. **Uebersee Finanz-Korporation, etc., v. Rosen** (1936), 83 F. 2d 225, 230. Applying the principle that where possible, words in a statute must be construed in their every day sense, **Browder v. United States** (1941), 312 U. S. 335, 338; **Crane v. Commissioner** (1947), 331 U. S. 1, 6, we find here there is nothing to indicate other than the ordinary every day meaning of the word, "gold", was intended.

But beyond the plain meaning of the words used there are other convincing indications that the interpretation sought by the government is the correct one.

First, the gold regulations issued on January 31, 1934 were before Congress when the Gold Reserve Act was passed.[4] The provisions with which we are concerned in this case are essentially the same as were contained in the regulations as then proposed. Such contemporaneous construction is entitled to great weight. **United States v. American Trucking Assn., Inc.** (1940), 310 U. S. 534, 549; **Norwegian Nitrogen Co. v. United States** (1933), 288 U. S. 294, 315.

Second, the economic problems facing the country at the time the Act became law must be kept in mind. The

[4] See Hearings before the Senate Committee on Banking and Currency, 73d Congress, Second Session, on S-2300 (Gold Reserve Act) at page 67.

entire currency system of the United States was in jeopardy, and one of the primary purposes of the legislation, along with granting control of the monetary gold to the Treasury, was the protection of that system. The House report on the bill, which was included in the Senate report, makes it very clear that these two aims were definitely intended to be accomplished by the language of the Act:

"General Purposes of the Bill

"This bill is designed to enable the administration to restore a fairer price level, to arrive eventually at a less variable dollar and to improve our financial and monetary system. It gives the United States Treasury possession of all the monetary gold stock in the United States, part of which now rests in private or quasi-private control. In this way the Government gains complete control over this metal and at the same time provides a permanent metallic reserve upon which to build a currency system which will be both sound and adequate in the future. The import of this may be appraised in the realization that all authorities seem to agree that the salvation of the country lies in our ability to control our price level. All commodities are measured in gold, hence the first step in our control must be the acquisition of gold stocks. The bill, therefore, transfers to the United States all gold now held by the Federal Reserve bank and pays for it in gold certificates. These gold certificates are to be used by the Federal Reserve bank as a substitute for their present gold stocks in issuing currency. **In order to protect the Government's power over gold, the bill gives it the right to regulate the acquisition, transportation, etc., of the metal**, and to further the Government's position, provisions are made for the forfeiture of gold withheld or acquired in violation of this act. In addition the gold supply is further protected by alterations in the former method of re-

> demption. The gold coin which was a part of the older system will now be withdrawn from circulation and melted into bars for use in adjusting the balance of foreign trade." House Report No. 292, Senate Report No. 201, 73d Congress, Second Session, which accompanied HR 6976. (Emphasis added.)

The report clearly reflects a legislative intent not to limit control to just the "monetary gold stocks" but "in order to protect the Government's power over gold" to extend the control to any "acquisition, transportation, etc., of the metal." As further support for the regulations, from the general economic condition of the country at the time, the government contends that "the Gold Reserve Act instituted a new policy in that prior to its enactment the parity of the dollar and gold had been maintained through gold coinage and redemptions by the government. Under the Gold Reserve Act, such parity has been maintained through purchases and sales by the government at the official price," which are provided for under the regulations. Appellant strongly attacks this position, arguing that the only means of maintaining the "parity of the dollar and gold" would be to have paper currency redeemable in gold coin, and that when such redemption was prohibited by the United States there was thereafter "no such thing as maintaining the parity of its currency with any gold dollar". Appellant could be right. It is not, however, necessary for us to decide. There is ample authority in the Act itself and in the official legislative history without requiring support from a need to maintain the parity of the dollar and gold.

Third, the legislative history subsequent to the enactment of the Gold Reserve Act is likewise revealing of a Congressional intent to authorize regulation of all domestic gold. The government points out that since 1946 there has been introduced in Congress a number of bills which, if passed, would have liberalized the restrictions on newly

mined gold in the United States by allowing unrestricted melting, treating, acquisition, etc.[5] During this twelve-

[5] Following is a list of such bills:

80th Congress—2nd Session:

S. 2583	94 Cong. Rec.	4027
S. 2802	" " "	8078
H. R. 5530	" " "	1657
H. R. 6366	" " "	5026

81st Congress—1st Session

S. 13	95 Cong. Rec.	38
S. 286	" " "	109
H. R. 67	" " "	15
H. R. 387	" " "	21
H. R. 3202	" " "	1987

82nd Congress—1st Session

S. 13	97 Cong. Rec.	86
H. R. 2864	" " "	1552

2nd Session:

H. R. 5005	98 Cong. Rec.	107

83rd Congress—1st Session:

S. 2364	99 Cong. Rec.	8580
S. 13	" " "	153
H. R. 125	" " "	55
H. R. 6156	" " "	8264

2nd Session

S. 3222	100 Cong. Rec.	4040
H. R. 6912	" " "	20

84th Congress—1st Session:

S. 515	101 Cong. Rec.	446
H. R. 606	" " "	43
H. R. 661	" " "	44
H. R. 2454	" " "	430

2nd Session:

H. R. 9016	102 Cong. Rec.	4652

85th Congress—1st Session:

S. 325	103 Cong. Rec.	239
S. 1775	" " "	4304
H. R. 375	" " "	68
H. R. 2132	" " "	306
H. R. 625	" " "	188
H. R. 2400	" " "	412
H. R. 3800	" " "	938
H. R. 9433	" " "	14476

2nd Session:

S. 2051	104 Cong. Rec.	113

year period not one of these bills has been passed. In addition several Congressional hearings have been held on the subject since the enactment of the Gold Reserve Act, looking to its amendment or repeal.[6] None of the bills which was the subject of the hearings was passed, and none of the hearings resulted in a report being issued by any of the subcommittees.

If Congress had been averse to the Treasury's gold regulations, it certainly had ample opportunity to cause their revision or repeal through amendment of the Gold Reserve Act. It has consistently refused to do so. Such refusal is at least some evidence of Congressional approval of the administrative interpretation. **Bowles v. Wheeler** (1945), 9 Cir., 152 F. 2d 34, 39.

From the language of the Act, from the fact that the regulations were before Congress at the time it passed the Act, from the Act's purposes expressed in the Act and its legislative history, and from a consistent Congressional refusal to require an amendment of the regulations, it is abundantly clear that the regulations with their very restrictive limitations on dealing in gold in the United States

[6] See Hearings of the Subcommittee on Monetary, Credit and Fiscal Policies of the Joint Committee on the Economic Report, 81st Congress, 1st Session, 1949, pages 552-579; "Investigation of the Financial Condition of the United States" Hearings before the Senate Finance Committee, 85th Congress, 1st Session, 1957, Part I, pages 486-488, 520-522; "Gold Reserve Act Amendments" Hearings before a subcommittee of the Senate Committee on Banking and Currency, 83rd Congress, 2d Session, on S. 1, S. 2322, S. 2364, and S. 2514, "To permit the sale of gold, to resume the redemption of gold, to establish a sound monetary system and for other purposes." See also Section 5 of the Bretton Woods Agreement Act of 1945 (22 U. S. C. 286) which provides that neither the President nor any other person or agency shall propose to the International Monetary Fund any change in the par value of the dollar, approve any change in such par value, or approve any general change in par values unless Congress by law authorizes such action; and Section 2 of the Bretton Woods Agreement Act of 1945, which obligates the United States not to buy gold at a price above par value, as prescribed under the regulations of Section 1, or sell gold at a price below par value minus the prescribed margin.

are well within the Congressional delegation of authority to the Secretary of the Treasury contained in Section 3 of the Gold Reserve Act. It follows then, that the enforcement of the regulation against the appellant even as to gold mined subsequent to the date of enactment is authorized by the Gold Reserve Act. We therefore need not reach the arguments directed to the question of whether the regulations are supported by other Congressional authority.

This brings us to a consideration of the question of whether the Gold Reserve Act itself is within the constitutional power of Congress: The Supreme Court in upholding the power of Congress in monetary matters has said:

> "The Constitution grants to the Congress power 'To coin money, regulate the value thereof, and of foreign coin.' Art. I, § 8, par. 5. But the Court in the legal tender cases did not derive from that express grant alone the full authority of the Congress in relation to the currency. The Court found the source of that authority in all the related powers conferred upon the Congress and appropriate to achieve 'the great objects for which the government was framed,'—'a national government, with sovereign powers.' McCulloch v. Maryland, 4 Wheat. 316, 404-407; Knox v. Lee, supra, pp. 532, 536; Juilliard v. Greenman [(1884), 110 U. S. 421], p. 438. The broad and comprehensive national authority over the subjects of revenue, finance and currency is derived from the aggregate of the powers granted to the Congress, embracing the powers to lay and collect taxes, to borrow money, to regulate commerce with foreign nations and among the several States, to coin money, regulate the value thereof, and of foreign coin, and fix the standards of weights and measures, and the added express power 'to make all laws which shall be necessary and proper for carrying into execution' the other enumerated powers. Juilliard v. Greenman, supra, pp. 439, 440.

"The Constitution 'was designed to provide the same currency, having a uniform legal value in all the States.' It was for that reason that the power to regulate the value of money was conferred upon the Federal government, while the same power, as well as the power to emit bills of credit, was withdrawn from the States. The States cannot declare what shall be money, or regulate its value. Whatever power there is over the currency is vested in the Congress. Knox v. Lee, supra, p. 545." **Norman v. B. & O. R. Co.**, supra, p. 303.

The power includes "The authority to impose requirements of uniformity and parity [which] is an essential feature of this control of the currency. The Congress is authorized to provide 'a sound and uniform currency for the country,' and to 'secure the benefit of it to the people by appropriate legislation.' Veazie Bank v. Fenno, 8 Wall. 533, 549." **Norman v. B. & O. R. Co.**, supra, 304.

Thus the power to make treasury notes legal tender for the payment of all debts, governmental and private, was affirmed in the legal tender cases, **Knox v. Lee** and **Parker v. Davis** (1871), 79 U. S. 287; **Juilliard v. Greenman**, supra. The power to abrogate the requirement to pay private contracts in gold and require the creditor to take currency was affirmed as to bonds payable without option in gold. **Norman v. B. & O. R. Co.**, supra. The power to abrogate private contractual provisions requiring payment in currency equivalent to the gold content of the dollar before devaluation was affirmed in **Holyoke Power Co. v. American Writing Paper Co.** (1936), 300 U. S. 324, where the Court denied appellant's claim that he was not seeking payment of a debt but instead was purchasing the commodity, gold. The power to invalidate a provision permitting an option to take payment equivalent to a non-devalued foreign currency likewise was affirmed in **Guaranty Trust Co. v. Henwood** (1939), 307 U. S. 243. Where Congress had

expressly delegated the authority to coin money to the Commission governing the Philippine Islands when it was subject to the sovereignty of the United States, the Supreme Court upheld an Act prohibiting the melting, mutilation or export of Philippine Island silver coins. **Ling Su Fan v. United States** (1910), 218 U. S. 302. At page 311 the Court said:

> "However unwise a law may be, aimed at the exportation of such coins, in the face of the axioms against obstructing the free flow of commerce, there can be no serious doubt but that the power to coin money includes the power to prevent its outflow from the country of its origin. To justify the exercise of such a power it is only necessary that it shall appear that the means are reasonably adapted to conserve the general public interest and are not an arbitrary interference with private rights of contract or property."

Here we must determine whether this broad and comprehensive authority of Congress over the monetary system of the nation, arising as it does from an aggregate of powers granted the Congress by the Constitution extends beyond abrogation of contracts in conflict with Congressional policy and "monetary gold" to "gold in any form" which the Gold Reserve Act seeks to control. In doing so we reach the doctrine first announced by Chief Justice Marshall early in our history that allows "to the national legislature that discretion with respect to the means by which the powers [the Constitution] conferred are to be carried into execution, which will enable that body to perform the high duty assigned to it in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of this Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist of the letter and spirit of the Constitution, are constitutional." **M'Culloch v. The State of Maryland** (1819), 4 Wheat. 316, 421. This

doctrine has been applied before in upholding the authority of Congress over the nation's monetary system. In considering the power of Congress to abrogate the clauses in private contracts requiring payment in gold, the question was presented to the Supreme Court of whether these "gold clauses" interfered with the policy which Congress had established in the exercise of this monetary authority. Chief Justice Hughes answered:

> "[The] point is whether the gold clauses do constitute an actual interference with the monetary policy of the Congress in the light of its broad power to determine that policy. Whether they may be deemed to be such an interference depends upon an appraisement of economic conditions and upon determinations of questions of fact. With respect to those conditions and determinations, the Congress is entitled to its own judgment. We may inquire whether its action is arbitrary or capricious, that is, whether it has a reasonable relation to a legitimate end. If it is an appropriate means to such an end, the decisions of the Congress as to the degree of the necessity for the adoption of that means, is final. McCulloch v. Maryland, supra, pp. 421, 423; Juilliard v. Greenman, supra, p. 450; Stafford v. Wallace, 258 U. S. 495, 521; Everard's Breweries v. Day, 265 U. S. 545, 559, 562." **Norman v. B. & O. R. Co.**, supra, 311.

As we have already determined in our analysis of the gold regulations, Congress in § 3 of the Gold Reserve Act granted authority to the Secretary of the Treasury to "prescribe the conditions under which gold may be acquired, held, transported, melted or treated, exported or earmarked," which includes authority over all gold except in its natural state, including newly mined gold.

Appellant contends that such authority over newly mined gold is not necessary to the exercise of the constitutional power of Congress to regulate the value of money. But

Congress, whose power over the monetary system, as we have seen, is broader than mere regulation of the value of money, has determined that such authority is necessary. As in the **Norman v. B. & O. R. Co.** case, supra, and the other Gold Clause cases, this is a question of fact and economic theory depending upon an appraisement of economic conditions and the relationship of gold to our currency, with respect to which Congress is entitled to its own judgment. In the exercise of that judgment, Congress concluded that in order to provide a permanent metallic reserve upon which to build a currency system which will be both sound and adequate to control the nation's price level and to provide a fund for settlement of international balances resulting from foreign trade, it was necessary for the Treasury to regulate and have control over "gold in any form".

We cannot say that this congressional determination is so destitute of basis or so arbitrary or capricious as to place the legislation and the regulations beyond the constitutional authority of Congress over the monetary system of the United States. The gold regulations, as authorized by the Gold Reserve Act, are clearly an appropriate means to a legitimate end, bearing a reasonable relationship to the purposes set forth in the Gold Reserve Act, all of which are clearly within constitutional authority.

This being so, appellant's argument that the enforcement of the regulations deprives her of property without due process of law is without merit. The Fifth Amendment, under which she asserts her rights, forbids the taking of property without just compensation or the deprivation of it without due process of law. But this provision refers only to direct appropriation. Here there has been none. Appellant is still free to deal with her property in any way she chooses limited only by the requirement that if gold should be extracted from the property it be disposed of in compliance with the regulations. Any hardship caused appellant by these regulations is not prohibited by

the Fifth Amendment which "has never been supposed to have any bearing upon or to inhibit laws that indirectly work harm and loss to individuals. A new tariff, an embargo, a draft, or a war, may inevitably bring upon individuals great losses; may, indeed, render valuable property almost valueless . . . But whoever supposed that because of this a tariff could not be changed or a non-intercourse Act, or an embargo be enacted, or a war be declared?" **Knox v. Lee**, supra, 549, 552. The quoted language is equally applicable to appellant's situation. The harshness of legitimate legislation affords no reason for considering it to be unconstitutional. **Norman v. B. & O. R. Co.**, supra, page 306.

Appellant's rights to mine and dispose of the gold on her property are not absolute as she contends. It is subject to what Congress, acting within its constitutional limits, may determine is for the greater public interest. Congress then, carrying out a policy it is free to adopt, has determined that the free sale of gold would interfere with the monetary system it has established for this country. Appellant has not established that Congress arbitrarily or capriciously decided that such interference existed.

It follows that since there is no taking, in the constitutional sense, her contention that property is being taken from her for a non-public use because the government may sell gold to private individuals is without merit.

Appellant argues the provisions in the Gold Reserve regulations setting the price at which the government, and in effect everyone else, will purchase and sell gold constitute legislation by the executive department of the government, in violation of Article I, Section 1 of the Constitution, as going beyond the power conferred upon the executive department by Article II of the Constitution. With this we cannot agree.

The authority to set the price at which the Treasury will purchase and sell gold "at such rates and upon such terms and conditions as [the Secretary of the Treasury] may deem most advantageous to the public interest" is not the authority to legislate, to enact laws or declare what the law shall be. It is, rather, the authority to determine a purchase and sale price within "the public interest", a criteria prescribed by Congress. Such a criteria when interpreted in the context of the entire Act and its stated purposes, is not a mere general reference to public welfare without any standards to guide the Secretary's determinations or a concept without ascertainable criteria too indefinite for fair enforcement. Instead, this criteria requires the prices set by the Secretary to bear a reasonable relationship to the broad aims of the legislation, to restore a fairer price level, arrive at a less variable dollar and improve the nation's financial and monetary system, as well as the more specific aim of granting to the Treasury control of gold in the United States. **F. C. C. v. RCA Communications, Inc.** (1953), 346 U. S. 86, 90; **American Power Co. v. S. E. C.** (1945), 329 U. S. 90, 105; **Yakus v. United States** (1944), 321 U. S. 414, 419-427; **New York Central Securities Co. v. United States** (1932), 282 U. S. 12, 24, 25. Appellant has failed to demonstrate that the price which the Secretary has set fails to conform to this criteria. Her allegation that the price has ruined the gold mining industry, even if true, is beside the point. The Act was not intended to encourage gold mining; it is concerned only with the monetary system of the United States. Under it the Secretary is not required to consider the condition of the gold mining industry in setting the price; he need only be concerned with carrying out the policy of Congress as expressed in the Act. That this policy may be found wanting is a purely political matter, the wisdom of which is not for the courts to decide. Our concern ends upon a showing that Congress in adopting the policy acted within its constitutional authority.

Appellant also contends that the power to set the price of gold contained in the Act is the exercise of a judicial function by the executive in violation of Article III, Section 1 of the Constitution. But as we have discussed above, the effects of this power on the appellant's property is not a "taking" in the constitutional sense. Without such a "taking" there can be no exercise of the judicial function of awarding just compensation. **Monongahela Navigation Co. v. United States** (1893), 148 U. S. 312, 324, 336, cited by the appellant is not in point as it is concerned with actual condemnation and a direct taking of a property interest for governmental purposes, not as here, with indirect effects of a government policy.

Finally, appellant contends that the federal government has no power to compel a private citizen to surrender private property in exchange for paper currency which has no absolute fixed value and which contains no obligation to redeem in any absolute fixed value and that the government has no power to measure "just compensation" in terms of such a medium. This question is no longer open. The gold clause cases, **Norman v. B. & O. R. Co. et al.**, supra, settled the issue by holding as valid the Joint Resolution of Congress, of June 5, 1933, 48 Stat. 112, which declared clauses in contracts requiring payment in gold to be against public policy and "every obligation heretofore or hereafter incurred, whether or not any such [gold requirement] provision is contained therein or made with respect thereto, shall be discharged upon payment dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts." While appellant claims no such issue was raised in the Norman case, the fact of the matter is the case affirmed three separate judgments in which creditors were denied the right to receive payment in gold or in dollars equivalent to the dollar before January 31, 1934, which contained a higher content of gold, and required to accept in satis-

faction of their claims the same paper currency to which appellant objects. See also **Holyoke Power Co. v. American Writing Co.**, supra, 341; **Guaranty Trust Co. v. Henwood**, supra, 259. Clearly, if appellant wishes to sell her gold she can only expect payment in legal tender.

The judgment of the district court is affirmed.

(endorsed:) Opinion. Filed Sept. 1, 1959.

Paul P. O'Brien,
Clerk.

United States Court of Appeals for the Ninth Circuit.

Gladys Laycock,
Appellant,
vs.
Frank J. Kenney,
Appellee.
No. 16,170.

Judgment.

Appeal from the United States District Court for the District of Oregon.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the District of Oregon, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the Judgment of the said District Court in this cause be, and hereby is affirmed.

(Endorsed) Judgment

Filed and entered: September 1, 1959

Paul P. O'Brien, Clerk.

United States Court of Appeals for the Ninth Circuit.

Excerpt from Proceedings of Wednesday, October 21, 1959.

Before: Hamley, Hamlin and Jertberg, Circuit Judges.

Order Denying Petition for Rehearing.

On consideration thereof, and by direction of the Court, It Is Ordered that the petition of Appellant, filed September 28, 1959, and within time allowed therefor by rule of Court for a rehearing of the above cause be, and hereby is denied.

United States Court of Appeals for the Ninth Circuit.

Gladys Laycock,

Appellant,

vs.

Frank J. Kenney,

Appellee.

No. 16,170.

Certificate of Clerk, U. S. Court of Appeals for the Ninth Circuit, to Record Certified Under Rule 21 of the Revised Rules of the Supreme Court of the United States.

I, Paul P. O'Brien, as Clerk of the United States Court of Appeals for the Ninth Circuit, do hereby certify the foregoing forty-eight (48) pages, numbered from and including 1, to and including 48, to be a full, true and correct copy of the entire record, including original exhibits transmitted herewith, of the above-entitled cause in the said Court of Appeals, made pursuant to request of counsel for the Appellant, and certified under Rule 21 of the Revised Rules of the Supreme Court of the United States, as the original thereof remains on file and appears of record in my office.

Attest my hand and the seal of the United States Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this tenth day of November, 1959.

.....

Paul P. O'Brien,

Clerk.

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JAMES R. BROWNING, Clerk

No. 551

In the Supreme Court of the United States

OCTOBER TERM, 1959

GLADYS LAYCOCK, PETITIONER

v.

FRANK J. KENNEY

ON A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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Solicitor General,
GEORGE COCHRAN DOUB,
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In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 551

GLADYS LAYCOCK, PETITIONER

v.

FRANK J. KENNEY

ON A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. 17–40) is reported at 270 F. 2d 580. The memorandum opinion of the district court is not reported.

JURISDICTION

The judgment of the court of appeals was entered on September 1, 1959 (Pet. 40). A timely petition for rehearing was denied on October 21, 1959 (Pet. 41). The petition for a writ of certiorari was filed on November 28, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTIONS PRESENTED

1. Whether the Gold Reserve Act of 1934 is within the authority of Congress to regulate the value of money under Art. I, Sec. 8, Cl. 5 of the United States Constitution.

2. Whether the regulations which the respondent seeks to enforce are reasonably related to the Secretary of the Treasury's statutory power to control the acquisition and processing of gold.

3. Whether the Gold Reserve Act of 1934 or the Treasury regulations thereunder constitute a "taking" of the petitioner's property under the Fifth Amendment to the United States Constitution.

STATUTES INVOLVED

1. Section 3 of the Gold Reserve Act of 1934, 48 Stat. 340, as amended, 31 U.S.C. 442, provides:

> The Secretary of the Treasury shall, by regulations issued hereunder, with the approval of the President, prescribe the conditions under which gold may be acquired and held, transported, melted or treated, imported, exported, or earmarked: (a) for industrial, professional, and artistic use; (b) by the Federal Reserve banks for the purpose of settling international balances; and, (c) for such other purposes as in his judgment are not inconsistent with the purposes of this Act. Gold in any form may be acquired, transported, melted or treated, imported, exported, or earmarked or held in custody for foreign or domestic account (except on behalf of the United States) only to the extent permitted by, and subject to the conditions prescribed in, or pursuant to, such regula-

tions. Such regulations may exempt from the provisions of this section, in whole or in part, gold situated in places beyond the limits of the continental United States.

2. R.S. 3699, as amended by § 9 of the Gold Reserve Act of 1934 (48 Stat. 341), 31 U.S.C. 733, provides in part:

> The Secretary of the Treasury * * * may sell gold in any amounts, at home or abroad, in such manner and at such rates and upon such terms and conditions as he may deem most advantageous to the public interest * * *: *Provided, however,* That the Secretary of the Treasury may sell the gold which is required to be maintained as a reserve or as security for currency issued by the United States, only to the extent necessary to maintain such currency at a parity with the gold dollar.

3. R.S. 3700, as amended by § 8 of the Gold Reserve Act of 1934 (48 Stat. 341), 31 U.S.C. 734, provides in part:

> With the approval of the President, the Secretary of the Treasury may purchase gold in any amounts, at home or abroad, with any direct obligations, coin, or currency of the United States, authorized by law, or with any funds in the Treasury not otherwise appropriated, at such rates and upon such terms and conditions as he may deem most advantageous to the public interest * * *.

STATEMENT

Petitioner initiated this action for declaratory relief to challenge the authority of the Secretary of the

Treasury under Section 3 of the Gold Reserve Act and to enjoin the respondent, a Treasury Agent for the State of Oregon, from enforcing the Treasury regulations controlling the acquisition and processing of gold. She alleges that she owns a 55% interest in certain mining claims in which approximately 234,000 tons of gold ore are blocked out but cannot be profitably mined or processed at the current price paid for gold by the Treasury. As a result of the price maintained by the Treasury, she claims that her property has been "taken" because it is idle and the mining improvements are deteriorating (Pet. 5–7).

The district court dismissed the petitioner's suit with prejudice for failing to state a cause of action. The court of appeals affirmed, holding that the Treasury regulations were authorized by Section 3 of the Gold Reserve Act (Pet. 32) and that the Act itself was a valid exercise of Congressional power over the monetary system (Pet. 36). It further concluded that the regulations did not amount to an unconstitutional "taking" of the petitioner's property under the Fifth Amendment because they had only an indirect or consequential effect on her ability to mine and dispose of gold (Pet. 37).[1]

ARGUMENT

Petitioner has unsuccessfully sought review of her grievances from this Court on two previous occasions,

[1] The court of appeals also held that the Secretary of the Treasury was not an indispensable party to the action. The Government disagrees with that conclusion (see *Blackmar* v. *Guerre*, 342 U.S. 512; *Webster* v. *Fall*, 266 U.S. 507; *Gnerich* v. *Rutter*, 265 U.S. 388; *Warner Valley Stock Co.* v. *Smith*, 165 U.S. 28), and, if certiorari were granted, would contend that the lower courts were without jurisdiction.

advancing substantially the same arguments which she presents in the present petition. In *Laycock* v. *United States,* 230 F. 2d 848, certiorari denied, 351 U.S. 964, she sought damages for loss of profits and depreciation of property allegedly caused by the Gold Reserve Act and the regulations. That suit was dismissed for lack of jurisdiction because the Government's consent to be sued for damages arising out of the control of gold had been expressly withdrawn by an Act of Congress, 49 Stat. 938, 939, 31 U.S.C. 773b. Petitioner then instituted the present action and moved the trial court to convene a three-judge district court. That motion was denied on the ground that there was no substantial question as to the constitutionality of the Gold Reserve Act, and this Court denied a petition for mandamus. *Laycock* v. *Mathes,* 354 U.S. 919.

Petitioner's arguments, presented to this Court for the third time, may be grouped into three main contentions: (1) that the Gold Reserve Act of 1934 is unconstitutional; (2) that the regulations of the Secretary of the Treasury are not authorized by the statute; and (3) that the regulations effect a "taking" of petitioner's property because they prevent her from mining and selling gold at a profit. Each contention is without substance.

1. That Congress has power to control the acquisition and possession of gold has long been settled. *Nortz* v. *United States,* 294 U.S. 317; *Norman* v. *B. & O. R. Co.,* 294 U.S. 240; *Ling Su Fan* v. *United States,* 218 U.S. 302. The need to control gold in order to regulate the value of currency depends upon an appraisal of economic theories and facts that are

within the exclusive province of Congress, and this Court has consistently refused to substitute its judgment on that policy determination. *E.g., Norman* v. *B. & O. R. Co., supra,* at 311. Congress considered the regulation of gold "in any form" (31 U.S.C. 442) necessary to a stable and uniform monetary system, and that policy judgment forecloses the distinction between gold as a monetary metal and "gold as a commodity" that petitioner seeks to draw (Pet. 13). Cf. *British-American Tobacco Co.* v. *Federal Reserve Bank,* 104 F. 2d 652 (C.A. 2); *Emery Bird Thayer Dry Goods Co.* v. *Williams,* 107 F. 2d 965, 971 (C.A. 8).

2. The Treasury Regulations challenged by petitioner (31 C.F.R. 54.1–54.70) establish a comprehensive scheme for control of gold by the Government. Among other things, they provide a strict licensing system for those who deal in gold (31 C.F.R. 54.12) and prescribe a standard price of $35 per troy ounce at which the Treasury will purchase or sell gold (31 C.F.R. 54.44, 54.52). Such regulations are unquestionably indispensable to implementation of the statute. Further, as the court of appeals pointed out, they represent a contemporaneous construction of the Act, are fully consistent with its legislative history, and have withstood repeated attempts at amendment (Pet. 27–31).

3. In claiming that the regulations effect a "taking" of her property, petitioner contends, in effect, that the Government, through its patent grant to mine gold, has undertaken an obligation to take no action that would affect her ability to operate the mine profit-

ably (Pet. 6, 9, 12). Clearly, however, the mining patent gave her only certain property rights in the minerals and did not immunize her from general regulation of the industry. Nor has there been a taking of the rights conferred by the patent. Property is "taken" only if there is either actual physical invasion or direct and substantial interference with the use and enjoyment of property,[2] and neither has occurred here.[3] Petitioner's injury, if any, is merely a remote consequence of federal legislation of nation-wide application, an interference of a kind and degree that has never been considered a "taking". See *United States* v. *Central Eureka Mining Co.*, 357 U.S. 155, 168, in which the Court, holding that wartime restrictions suspending gold mining did not effect a "taking", reaffirmed the principle that "the mere fact that the regulation deprives the property owner of the most profitable use of his property is not necessarily enough to establish the owner's right to compensation." See also *United States ex rel. T.V.A.* v. *Powelson*, 319 U.S. 266, 281–283; *Omnia Commercial Co.* v. *United States*, 261 U.S. 502, 510, 513; *Mugler* v. *Kansas*, 123 U.S. 623, 664, 668, 669.

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[2] See *United States* v. *Pewee Coal Co.*, 341 U.S. 114; *United States* v. *Dickinson*, 331 U.S. 745, 748; *United States* v. *General Motors Corp.*, 323 U.S. 373, 378; *Pennsylvania Coal Co.* v. *Mahon*, 260 U.S. 393, 413; *Block* v. *Hirsh*, 256 U.S. 135, 155–156.

[3] Cases such as *United States* v. *Kansas City Life Ins. Co.*, 339 U.S. 799, and *United States* v. *Causby*, 328 U.S. 256, relied on by petitioner (Pet. 9–10), involved actual physical invasion of property. *Pennsylvania Coal Co.* v. *Mahon*, *supra*, is distinguishable in that the restriction imposed there was for the particular benefit of a single house, while the restriction here is one of general application for the public good.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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DECEMBER 1959.

U.S. GOVERNMENT PRINTING OFFICE: 1959